

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :

vs

09-CR-272

MARK A. CIAVARELLA

BEFORE: THE HONORABLE EDWIN M. KOSIK

PLACE: COURTROOM NO. 1

PROCEEDINGS: JURY TRIAL

DATE: WEDNESDAY, FEBRUARY 16, 2011

APPEARANCES:

For the United States: GORDON ZUBROD, ESQ.
WILLIAM HOUSER, ESQ.
MICHAEL CONSIGLIO, ESQ.

For the Defendant: ALBERT FLORA, ESQ.
WILLIAM RUZZO, ESQ.

1 THE COURT: Please sit down. They have something
2 they want to put on the record here before we begin. We will
3 do it here at sidebar.

4 (The following discussion took place at sidebar:)

5 MR. FLORA: Your Honor, in light of the Court's
6 ruling on the use of the plea colloquy of Robert Mericle, just
7 to cover ourselves for purposes of the record, we would move
8 for the introduction of Defendant's Exhibit No. 1, which is the
9 actual plea transcript of Robert Mericle.

10 In addition, Your Honor, we will move for the
11 introduction of Exhibit No. 2, which is the plea transcript of
12 Robert Powell in which in that transcript Gordon Zubrod also
13 stated that the money paid to Robert Mericle was a finder's
14 fee. As the -- as we indicated previously to the Court, we
15 have been trying to introduce this type of evidence to show a
16 party admission on the part of the government. The Court ruled
17 we cannot read from the transcript specifically. We will move
18 for the Exhibit of 2.1, which is the stipulation executed
19 between the government and defense, showing that those
20 transcripts are true and accurate copies. They are not going
21 out to the jury.

22 We're just putting this on the record to cover
23 ourselves. The next, Your Honor, with regards to the Court's
24 ruling dealing with the cross examination of Robert Powell,
25 when I began getting into the credit cards, the Court's ruling

1 with regards to the cross examination of Pat Owens, making
2 inquiries as to the monetary outlays to Robert Powell, and
3 based the evidence presented by the government in its case in
4 chief, I want to put on the record -- and recognizing the
5 Court's ruling that I --

6 THE COURT: It is on the record.

7 MR. FLORA: Yes.

8 THE COURT: In light of the Court's ruling that I
9 cannot make inquiries into the extent of the outlays made to
10 Robert Powell the companies of him and Gregory Zappala showed
11 some type of embezzlement, showed those outlays existed between
12 2006 and 2008, to show that Robert Powell was concerned about
13 the audits being conducted by Gregory Zappala, the companies
14 that was jointly held by Robert Powell and Gregory Zappala, I
15 just want to renew the introduction of evidence, Your Honor, of
16 the following documents: Defendant's Exhibit No. 30, which is
17 the American Express Card billings; Defendant's Exhibit No. 28,
18 which is a breakdown of the Financial Transactions of
19 Mid-Atlantic Youth Services; Defendant's Exhibit 29, which is a
20 breakdown of the financial transactions of PA Child Care;
21 Defendant's Exhibit No. 32, which are the bank statements of
22 Vision Holdings; Defendant's Exhibit No. 32.1, which is the
23 stipulation executed between the government and the defendant.
24 These records are business records maintained by these various
25 entities, and in addition, Your Honor, I would want to move

1 into the record Defendant's Exhibit No. 95, which is a breakout
2 of all of the monetary outlays from -- from Pennsylvania Child
3 Care and Western PA Child Care and from Mid-Atlantic Youth
4 Services, the various entities Robert Powell held in his
5 individual capacity which outlays almost \$3 million.

6 In addition, Your Honor, had I been allowed, I would
7 have called -- if it necessary, I would have called the current
8 chief financial officer to testify as to what those outlays
9 were. I could not get an agreement as to the business record
10 exception by the government. And that would be -- that
11 breakout, Your Honor, would be Defendant's Exhibit No. 95.

12 MR. HOUSER: Government has no objection to them
13 being included for purposes of the record. Just by way of
14 brief response, it's the government's position that there was
15 no offer of proof that there was any good faith basis to
16 believe there was any theft going on that and this was a mere
17 fishing expedition. That's why I think the Court has ruled
18 appropriately here.

19 THE COURT: Does the government rest?

20 MR. HOUSER: No, we have -- we have a rebuttal case
21 just to move exhibits. That's it. We're done.

22 THE COURT: You're not --

23 MR. HOUSER: No more witnesses.

24 THE COURT: All right. Then you rest?

25 MR. HOUSER: Yes.

1 THE COURT: Then you're going to rest?

2 MR. FLORA: Yes.

3 THE COURT: Okay. Now, I wanted to tell you from the
4 time we had a conference as far as Gordon Zubrod's statement I
5 anticipated you were going to call him as a witness. I did. I
6 brought it up at one of our conferences that one of these
7 lawyers may be called.

8 MR. HOUSER: Okay.

9 (The discussion at sidebar concluded.)

10 THE COURT: It appears we are not going to have any
11 more evidence. The government wants to move the admission of
12 certain records before they close their case. If there's no
13 rebuttal, go ahead.

14 MR. FLORA: Your Honor, the defense rests.

15 THE COURT: Okay.

16 MR. HOUSER: The government moves the following
17 exhibits, the first exhibit is -- these were exhibits referred
18 to in the cross examination yesterday. 4.38, which is a HUD
19 statement, a record of Pinnacle Group of Jupiter; 4.40,
20 operating agreement of Pinnacle Group of Jupiter, that is also
21 a Pinnacle business record; 4.42, the amended and restated
22 operating agreement -- that's a business record of Pinnacle;
23 17.3, business records of Citizens Bank; 17.4, business records
24 of Automobile City; 17.5, business records of Wyoming Valley
25 Motors; 17.6, business records of Wyoming Valley Motors.

1 MR. ZUBROD: May it please the Court, the United
2 States rests.

3 THE COURT: All right, ladies and gentlemen of the
4 jury, we are going to start the morning with closing remarks of
5 counsel. First you'll hear from the government, and they will
6 reserve some time for rebuttal. Then you will hear from the
7 defense, and then that will be followed by the Court's charge.

8 I told the jury privately they would be hearing more
9 words spoken today than they ever have throughout their lives,
10 but it's necessary. I will try to be as accommodating as I can
11 by taking a recess after each of the closings and then during
12 the Court's charge. If it exceeds the appropriate time, we
13 will take a recess in the middle of the Court's charge, and I
14 think you will find it more comfortable.

15 Now, if you guys are going to use those exhibits
16 again during your close, I have no problems. But would you
17 mind putting them over there as I suggested in the beginning so
18 the jurors can look to their left? Before you begin, systems
19 -- if they haven't already done so, are going to -- you have a
20 mic, which we didn't have for the opening statements, okay.

21 I would like -- -- I want to be able to see the
22 jurors, and I want to see the faces of counsel. That exhibit
23 blocks your faces, not that's there any fear, but sometimes
24 there are facial expressions that communicate things, most of
25 them directed at me. Please.

1 MR. ZUBROD: May it please the Court, Mr. Flora, Mr.
2 Ruzzo, ladies and gentlemen of the jury. On behalf of all of
3 us, Judge Kosik, Mr. Flora, Mr. Ruzzo and all of the members of
4 the United States team, we want to thank each one you for the
5 time and attention and effort you put into this case.

6 I said during the opening statements that this is an
7 important case. It is important to Mr. Ciavarella. He's been
8 accused of some of the worst acts that could be ever laid at
9 the door of a public official who is a judge. He stands
10 accused of betraying the trust by the very people who elected
11 him. It is charged that he sold himself and used his high
12 office as a judge for personal gain. It is charged that he
13 took money through bribes, kickbacks, rewards and extortion for
14 doing his job as a judge.

15 And in the process, as I mentioned to you in our
16 first statement when I appeared to you -- before you a week
17 ago, week and a half ago, that he hid that money, he turned his
18 office into a cash cow, into a money making machine, and he
19 then hid that money to avoid public and law enforcement
20 scrutiny. It is important for Mr. Ciavarella to have his day
21 in court.

22 I told you in the opening statements that it's also
23 important to the citizens of Luzerne County and the
24 Commonwealth of Pennsylvania because their lives and the lives
25 of their children should only be put in the hands of public

1 officials who have honor and integrity as their lodestar who
2 wouldn't think of taking a bribe or extortion or harming one of
3 their own children.

4 I told you that it was important to the victims in
5 this case, particularly the victims that did not appear today
6 but who appeared before Judge Ciavarella when he sat as
7 juvenile court judge and used his pawns and schemes to enrich
8 himself. Finally, this case is important to the United States.
9 It's charged with a responsibility to ensure that every citizen
10 is protected from corrupt public officials. Now, we're
11 confident that you know the key facts of this case. You've
12 been listening attentively. You got -- and I am not going to
13 spend my closing argument going through the minutia detail by
14 detail in retelling the story of what you heard over the last
15 week and a half.

16 Rather, what I am going to do is first lay out a few
17 principles to guide you in looking at the evidence and.
18 Secondly, to the extent that I have the time, I'm going to walk
19 you through some of the -- discuss the nature of the some of
20 the laws that you're going to have to apply and show how the
21 events and the evidence points and meets each element of those
22 offenses.

23 Now, virtually, all of the evidence of all of the
24 offenses have been agreed to, the effect on interstate
25 commerce, the need to have at least -- in excess of \$10,000 of

1 federal funds in any year in which a program, the juvenile
2 detention services program, in which the criminal offense
3 occurred. We've shown millions of dollars on every quarter of
4 every year.

5 The use of the mails to further the crime -- none of
6 these issues are in dispute. I think Mr. Flora would agree and
7 will agree. What the case boils down is the intent of the
8 defendant. It boils down to a very few issues. No. 1, did
9 Mark Ciavarella take kickbacks, bribes and rewards from Robert
10 Mericle? No. 2, did he and Michael Conahan extort money from
11 Robert Powell and then did he try and hide the illegal proceeds
12 using money laundering? Did he try to hide the illegal
13 proceeds by filing false statements with the Administrative
14 Offices of the Pennsylvania Courts, and did he try to hide the
15 proceeds by filing false tax returns?

16 Crimes committed by well educated people are a world
17 apart from the blue collar type crimes, the street crimes that
18 you normally see on television or in the newspaper. Well
19 educated people tend to commit what is universally referred to
20 as white collar crimes. Why does the law call it that? First,
21 white collar criminals don't just run in and wave a gun and
22 grab the money and run. As I said, they are very intelligent
23 people. They move supplely. They plan carefully. They
24 execute the plan with precision.

25 They are able to disguise what are criminal

1 transactions and make them look normal and common place. They
2 are able to play upon their standing in the community to
3 facilitate their crimes. People in a high position of trust
4 are afforded a wide latitude. That's what a position of trust
5 is all about. A special trust is given you, and a broad
6 discretion is given to you to carry out your duty in public
7 interest. And it is that discretion that a white collar
8 criminal who is a public official plays upon to commit the
9 crimes.

10 Now, there are four points that I want to use to
11 describe what the evidence is in this case and how to look at
12 the evidence: Concealment. Coincidence. Cash and control.
13 These are principles that we instinctively know. It's not
14 something you read in books. It is something that you pick up
15 in the life experience. It's really just common sense. Take
16 concealment, for example. The law acknowledges that
17 concealment demonstrates a consciousness of guilt. And it is
18 evidence of consciousness of guilt that reveals the criminal
19 intent of the individual. It is rarely criminal -- criminal
20 intent is rarely proven by direct statements of an individual.
21 It is rarely proven by documents they sit down and write laying
22 out what the scheme is.

23 As a matter of fact, most white collar criminals --
24 I'm sorry -- most white collar defendants, including this
25 defendant, readily said or say, sure, I did it, I just didn't

1 think it was a crime, I thought it was legal. Intent is proven
2 by evidence of consciousness of guilt. And concealment of the
3 activity graphically shows Mr. Ciavarella and his
4 coconspirator, Michael Conahan, well knew that what they were
5 doing was wrong. Moreover as lawyers and judges, they very
6 well knew that what they were concealing was criminal.

7 Now, do you remember the meeting between Robert
8 Mericle and Mark Ciavarella in November of 2007 in then Judge
9 Ciavarella's chambers? Do you remember Mr. Mericle came in,
10 Mr. Ciavarella held up a sign that says, are you wired, yes,
11 no? Mr. Mericle went and checked no. Mr. Ciavarella then took
12 him out of the chambers, took him into an empty courtroom.
13 They sat at a table and they spoke.

14 By this time, federal agents -- these federal agents
15 have hit the road. They are -- they are collecting evidence.
16 They are seizing evidence. They are interviewing witnesses.
17 They are issuing grand jury subpoenas. The grand jury is
18 bringing people before it to hear evidence. Mr. Ciavarella in
19 the midst of that -- he says to Robert Mericle -- he says, my
20 recollection is that you gave the finder's fee directly to me.
21 Mr. Mericle responded, no, it went through Robert Powell --
22 what you directed me to do.

23 And then Judge Ciavarella said, well, if you gave the
24 money directly to me, I'm going to get a slap on the wrist, but
25 if you gave the money to me through Powell, I'm going to jail.

1 Now, Mark Ciavarella is a judge, and he's a lawyer.
2 He knows that he's receiving an illegal kickback. He knows if
3 it is discovered that he concealed that illegal kickback it is
4 indisputable proof of consciousness of guilt. He knows it
5 proves his criminal intent to commit the crime. He knows it --
6 he's a judge. He knows his acts of concealment convict him.
7 So what does Mark Ciavarella do?

8 He tells Robert Mericle, I don't want you to lie or
9 obstruct justice but would you go back and look at your records
10 and see if maybe you gave the money directly to me and didn't
11 send it through Robert Mericle -- didn't send it through Robert
12 Powell. Now, Robert Mericle testified he knew exactly what he
13 was being asked to do. He was being asked to go back and alter
14 those records and lie to law enforcement when they came to
15 speak to him.

16 In other words, Mark Ciavarella's solution to his
17 criminal concealment of the kickbacks to -- from Mericle was to
18 have Robert Mericle criminally conceal his criminal
19 concealment. And in that conversation with Robert Mericle,
20 Mark Ciavarella didn't just attempt to obstruct justice with
21 concealment. He flat out admitted that the original act of
22 concealing kickbacks was driven by a consciousness of guilt by
23 a criminal intent to cover up his criminal acts. If you gave
24 me the money through Powell, I'm going to jail to cover up the
25 fact he sold himself and his office. That is powerful proof of

1 guilt in this case of concealment. What were the acts of
2 concealment? I will give you a few. Remember the building of
3 PA Child Care. The transaction was made to look as if all the
4 money went to Robert Powell. Robert Mericle, a close personal
5 friend of Mark Ciavarella, who is his mentor, who he looked to
6 as a big brother for whom he lied to law enforcement and he
7 went to the grand jury. Mericle testified, having been
8 prosecuted -- Mericle testified the idea to use Powell as a
9 conduit originated with Mr. Ciavarella.

10 Robert Powell when Ciavarella and Conahan told him
11 that the money was going to go through him as a lawyer, he knew
12 immediately he'd be put in the middle of an illegal kickback.
13 He knew immediately that he was facilitating a criminal
14 conspiracy. He knew -- let me ask you this. Why was Mark
15 Ciavarella so anxious to conceal Mericle payments? The answer
16 is because he knew it was a kickback. Why is it a kickback?
17 Judge Ciavarella in his efforts to get a facility for detaining
18 juveniles built in Luzerne County brought Robert Mericle to the
19 table.

20 Robert Mericle got the contract to build the
21 facility. Having gotten the contract, having gotten the
22 reward, he went and gave -- he had gotten the money. He gave a
23 reward from his profits to Judge Ciavarella. Judge Ciavarella
24 knowing that the money was being kicked back to him from the
25 profits Mericle made accepted the payments knowing that it was

1 for his -- his discretionary acts as a judge in putting
2 together the team that helped build the youth detention center,
3 and he knew it. Now, Judge Kosik will tell you in his
4 instructions that if you find the defendant accepted the
5 payment from Robert Mericle with the intent to be rewarded for
6 a decision already made, it does not matter that the payment
7 was not accepted until after the transaction. You can't take
8 money as a reward for doing your job.

9 Judge Ciavarella was the juvenile court judge. In
10 his capacity as the juvenile court judge, he took steps to have
11 a new juvenile detention center built. If he couldn't get the
12 county to build it, then he was going to use his authority and
13 his position and his discretion as a judge to have it built
14 privately but for public use.

15 In his capacity as a judge, he got Robert Powell to
16 put together a team and to commit to get funds to go build it.
17 In his capacity as a judge, he brought Robert Mericle to the
18 table to build the facility. Mericle had made millions by
19 building the PA Child Care facility, and he testified that he
20 gave Judge Ciavarella \$997,600 as a reward for bringing him to
21 the table, which again led Mericle to making more millions.

22 This is a reward. It's a bribe. It is a kickback,
23 and it's illegal. The bribery statute itself states that you
24 are guilty of taking a bribe if you, quote, corruptly solicit
25 or demand or accept or agree to accept anything of value from

1 any person intending to be influenced or rewarded in connection
2 with any business transaction or series of transactions.

3 Robert Mericle kicked back the portion of his profits
4 to Mark Ciavarella because without the judge he would not have
5 been brought to the table and he would not have made his
6 millions. Robert Powell also played a role in that because
7 Powell was the conduit through which the money went to get to
8 Judge Ciavarella. Now, we know why Mericle did it. Why did
9 Robert Powell do it? Because he correctly believed if he
10 didn't do it Judge Ciavarella exercising his judicial authority
11 and discretion would not have sent any children to PA Child
12 Care.

13 Robert Powell saddled with a \$12 million -- later \$25
14 million mortgage when Western PA Child Care was built would
15 have been ruined. So regarding Robert Powell, when Judge
16 Ciavarella required him to become the conduit for getting
17 Mericle's money to him, he was demanding that Powell help him
18 get something of value. Common sense dictates that Mark
19 Ciavarella intended to be influenced in the performance of his
20 job if the judges helped to get PA Child Care built and if
21 Powell played a concealment role in getting the moneys to them,
22 then Powell would get and PA Child Care would get the children
23 for detention and treatment.

24 For Mericle it was a reward, a kickback. For Powell
25 it was a demand implicitly telling him if he didn't do it he

1 was not going to get the children sent to PA Child Care.

2 Another example of concealment of payments is there any greater
3 evidence of an attempt to concealment that blew up in
4 Ciavarella and Conahan's face than the rental of the
5 condominium down in Jupiter, Florida? In about seven months
6 Robert Powell paid a total of \$590,000 for rent of -- rental of
7 a boat slip and a condominium. When he was already at that
8 same place, he had been paying for the rental of the boat slip.
9 And when Judge Conahan and Judge Ciavarella -- they didn't have
10 a boat slip to rent to him, yet he was paying them rent for a
11 boat slip.

12 The \$590,000 covering seven months was purportedly
13 for the rental of a condominium that cost \$785,000 in total.
14 Powell said that he used the condo twice in three years. But I
15 don't care how many times he used it. I don't care if he used
16 it every weekend. Nobody -- and I mean nobody -- pays \$590,000
17 in seven months to rent a condominium. When you're
18 deliberating, look at the checks that Robert Powell wrote.
19 It's a scam on its face. When you look at it, you will see
20 he's writing out checks to cover the same time period over and
21 over again, February, March, April, March, April, May, April,
22 May, June.

23 Additionally, Mark Ciavarella when he testified on
24 cross examination he acknowledged that even as late as May 2004
25 the condominium was nothing but a shell. It was just -- it was

1 just walls, concrete floor, concrete everywhere. It was a
2 shell. It was unusable. You couldn't live in it. Yet when
3 you look at the checks, Robert Powell is writing checks for
4 February -- rental checks for February, for March and for April
5 for a shell.

6 On its face, this is a complete fraud. It is an act
7 of concealment. As Robert Matta -- do you remember the
8 Schuylkill County attorney slash accountant slash banker who
9 moved the money through his bank account? He said, if I had
10 known that this was money that was going from PA Child Care and
11 a person associated with PA Child Care to the judge who is
12 going to be sending children to PA Child Care, I wouldn't have
13 touched it, I would have gone to the Supreme Court disciplinary
14 board about it and I probably would have gone to law
15 enforcement. When I asked him why, he says because it's money
16 laundering.

17 Now, when you are trying to cover up a bribe or
18 reward or kickback or even extortion in a financial
19 transaction, that is money laundering. Mark Ciavarella
20 testified he had nothing to do with rental payments, that Mr.
21 Conahan handled the whole thing. But under the conspiracy law,
22 if you find that Mark Ciavarella and Michael Conahan agreed to
23 accept kickbacks, rewards, bribes, extortion payments, then the
24 act of one is chargeable to the other. Mark Ciavarella's
25 central defense is, I didn't rob the bank, I just drove the

1 getaway car. Well, it doesn't matter. If you're aware of what
2 your coconspirator is doing and you agree, then your acts are
3 chargeable to him and his acts are chargeable to you. And may
4 I just for a moment talk about the conspiracy statute?

5 Both Congress and the Supreme Court have repeatedly
6 said, repeatedly endorsed, repeatedly supported the use of the
7 criminal conspiracy statute for reasons that very obvious in
8 this case. One criminal acting alone can do a lot of damage.
9 But two or more criminals acting together can do experientially
10 greater damage, and they can commit much bigger crimes. Take
11 this case, for example. Judge Ciavarella had the power in
12 deciding where to send children for detention and treatment,
13 but he didn't have the power to deal with commissioners. He
14 didn't have the power to enter into contracts, but Judge
15 Conahan did.

16 Together they were able to pull off what alone they
17 would have been unable to do. That's what the conspiracy
18 statute is designed to address. It is designed to defeat
19 criminal combinations that are extremely hard to overcome
20 without being able to show that parties acting independently of
21 each other with the knowledge of what they're doing when the
22 other person isn't around but working toward a common goal can
23 be guilty of conspiracy. That's just common sense the way
24 criminal conspiracies work.

25 And it is common sense -- it is a common sense way of

1 addressing secretive and powerful criminal organizations. If
2 you find an agreement between Mark Ciavarella and Michael
3 Conahan to engage in the charged criminal activity, the act of
4 one is chargeable to the other. In other words, Mark
5 Ciavarella's statement that he had nothing to do with the
6 rentals just doesn't wash. It was his conduct. He was raking
7 in the cash. He knew where the money was from. He knew that
8 it was disguised to look legitimate. He admitted that on cross
9 examination. He's guilty of extorting money from Robert Powell
10 and disguising it as rent, and he did it by conspiring with
11 Michael Conahan.

12 Concealment in tax records, the Administrative
13 Offices Pennsylvania Courts, if you take a look at the -- at
14 the AOPC records, you will note that it says that you have to
15 report any creditor, any interest in real estate, any gift, any
16 direct or indirect source of income, any financial interest in
17 any legal entity in business for profit, any office or
18 directorship or employment. When you put together PA Child
19 Care, Western PA Child Care, W-Cat and all the other businesses
20 and even the condo and all the other businesses, that describes
21 about every financial relationship in this case.

22 And Mark Ciavarella concealed it because if anyone
23 found out about these payments, he would find himself sitting
24 where he's sitting today in a federal court. Remember in cross
25 examination he said, okay, I didn't think anything was illegal

1 but I hid all the transactions, I admit doing that. Why? He
2 said to avoid all of this. What is all of this? It's a
3 federal criminal prosecution. Another concealment is the tax
4 fraud where he hid the proceeds of the activity. He hid the
5 Mericle payments through Powell. He hid the Mericle payments
6 through Pinnacle Group of Jupiter. He hid the Powell payments
7 as rent paid through Pinnacle Group of Jupiter.

8 He hid the Mericle and Powell payments on his
9 statements to the AOPC, and he hid them on his taxes. He
10 didn't report one penny of the \$997,600 from Mericle,
11 mischaracterizing later payments as rent. That is concealment,
12 and it runs throughout the case. In addition to concealment,
13 one of the -- the other ways of looking at this case is
14 coincidence. And again, that's simply common sense.

15 All of us have had -- had the experience of one event
16 over here and one event over here and together and that event
17 changes anything about our lives. You know, how did you meet?
18 Well, we happened to be standing at the same corner at the same
19 time and our eyes met, something like that. Everybody has
20 experienced that. But when critical events start lining up one
21 after the other, and when those critical events are critical to
22 arriving at a particular goal, then it is no longer
23 coincidence, it's a plan.

24 And when it happens in a racketeering case, it is not
25 a coincidence either. It is a criminal plan. Let's look a

1 series of remarkable coincidences that surrounded Mark
2 Ciavarella in this case. From the time Mark Ciavarella became
3 a judge, became the juvenile court judge in 1996, he complained
4 to anyone who would listen about PA Child Care -- I'm sorry --
5 about the deplorable condition of the Luzerne County Youth
6 Detention Center. He complained to the commissioners. He said
7 it was unfit for children. We heard in court that it was
8 dangerous to put children in there. Using the authority of his
9 office, he set in motion the movement to build a new youth
10 detention center.

11 He -- we found out from the testimony that a juvenile
12 court judge has the absolute power to stop sending children to
13 the county detention center, to send them instead to any
14 contract facility that he chose. But he didn't do a thing
15 until January of 2003. Why? By July 2001 Robert Mericle had
16 told Mark Ciavarella he had a whopping pay day coming as a
17 finder's fee as a reward for getting the contract for building
18 PA Child Care. Mark Ciavarella immediately went over to the --
19 to Michael Conahan and offered to split the money with him.
20 Why? Because Michael -- Mark Ciavarella needed Michael Conahan
21 because when Mark Ciavarella can control where children went,
22 Michael Conahan -- he needed -- he needed the power and
23 authority of the president judge to force the closure of the
24 county-run facility. He needed the power and the authority of
25 the president judge to block any attempt on the part of the

1 county to build a new youth detention center.

2 Both Mericle and, as I recall, Powell testified that
3 he, Mericle, Ciavarella and Conahan all agreed that Powell
4 would not apply for financing until January of 2002 when Mike
5 Conahan became the president judge. And when Michael Conahan
6 became the president judge in January 2002, that same month
7 knowing that a big pay day would await if PA Child Care got the
8 money and was built, Michael Conahan drew up a placement
9 guarantee agreement enabling Robert Powell to get \$12 million
10 to build PA Child Care.

11 Suddenly in late 2002, Ciavarella and Conahan are on
12 television talking about the failure of the commissioners to
13 remedy the problem. You heard Judge Ciavarella saying, it is
14 my job to make sure these children are rehabilitated, it is my
15 job to make sure they are in a safe place for rehabilitation,
16 it is my job -- or it's not my job to put them in a place that
17 is dangerous for them where they can get hurt. He was using
18 his position as a judge to sell that.

19 And they were complaining about the Luzerne County
20 facility and about the failure of the commissioners to remedy
21 the problem. Michael Conahan in 2002 chooses that very moment
22 to announce that no more children will be sent by Judge
23 Ciavarella to the Luzerne County Youth Detention Center. He
24 also said there would be no more funding as of December 31,
25 2002 of the county detention center. Why 2002? Because Mark

1 Ciavarella and Michael Conahan by then knew that they would be
2 getting a big pay day not only if PA Child Care was built and
3 was in business but if it didn't have any competition within
4 Luzerne County for the business of kids. The new county center
5 had to be blocked. By 2002 Robert Powell, thanks to Michael
6 Conahan, had the money to build PA Child Care. By 2002, Judge
7 Ciavarella and Judge Conahan knew that the county was going to
8 go ahead and try to build a new facility because Mark
9 Ciavarella and Michael Conahan knew that if they can force the
10 closure of the county facility, they can anticipate future
11 paydays through Powell because the reality of the timing of the
12 events was not a coincidence.

13 The fact that Conahan and Ciavarella would be on the
14 receiving end of hundreds of thousands of dollars, if and only
15 if it got built and if and only if PA Child Care didn't die on
16 the vine would prosper and if and only if PA Child Care got the
17 children from Luzerne County is intrinsically intertwined with
18 the sudden movement of shutting down the Luzerne County Youth
19 Detention Center and blocking every attempt by the county to
20 build a new county run center. This is like an open wound that
21 cuts across all of the way across this case.

22 Now, you recall in September of 2002 President Judge
23 Augello removed Mark Ciavarella from being the juvenile court
24 judge, and he took that position himself. The moment Michael
25 Conahan became the president judge in January of 2002 he

1 removed Judge Augello and put Mark Ciavarella right back into
2 that position. The act of one is chargeable to the other. Do
3 you see the concert of action that's taking place there? This
4 is not a coincidence. It is a plan. Consider the coincidence
5 of the payments to Pinnacle Group. Pinnacle Group didn't own
6 the condo until February of 2004. Pinnacle Group had no
7 condominium until February of 2004. Robert Powell started
8 paying his rent in January of 2004.

9 By January of 2004 the entire \$480,000 that Mark
10 Ciavarella got had been spent. It was gone. Nothing was left.
11 They had only approximately three or four thousand dollars left
12 in their account. And as Mark Ciavarella admitted during cross
13 examination, he was spending way more money than his salary
14 could bear. And it was at that moment that the extortion of
15 Robert Powell began. Is that a coincidence? Powell starts
16 putting rent and marina pay February, March, rental, April,
17 January, February, March and April rentals on the checks. He
18 makes two payments of -- \$35,000 and \$50,000 in January and
19 February. That's \$85,000. That money went to Cindy Ciavarella
20 as that came out during our case.

21 The closing of the condo was February of 2004. Cindy
22 Ciavarella was not even a part of the Pinnacle Group of Jupiter
23 until March 2004, yet she was paid \$85,000 in February --
24 January and February of 2004. Is that coincidence? The next
25 extortion payment was on May 1st, 2004. And shortly

1 thereafter, Cindy Ciavarella became a one half owner of
2 Pinnacle Group. Cindy Ciavarella didn't become an owner until
3 March of 2004.

4 And yet, she received her share of the rental fees
5 before the condo had been completed, before she became an
6 owner, before Pinnacle Group even owned a condo. Now, what's
7 going on here? Essentially, Robert Powell bought Mark
8 Ciavarella and Michael Conahan -- gave them a free condominium
9 because you remember the contract was for -- they said the
10 rental contract was for \$900,000 over five years for a \$785,000
11 condo. That was Powell's price that he had to pay to get
12 children sent to PA Child Care, a free condo for Ciavarella and
13 Conahan. Step back and look at it.

14 A businessman utterly dependant on that judge for
15 business to be sent, the success of his business hung on
16 whether or not that judge sent children to his center, and he
17 keeps paying them and he keeps getting business, this is why
18 the Pennsylvania standards of ethics for judges say that you
19 cannot have any income outside of your own salary. This is not
20 a coincidence. It is a plan.

21 The same thing with Robert Powell's payments in 2004
22 and 2006. Remember he paid rental in 2004 for the condo of a
23 shell. He paid cash in February -- in 2006 for Fed Ex. Why
24 not in 2003 and 2005, the years preceding the extortion
25 payments? If you look at Government's Exhibit 20.9, you get a

1 picture of it. 2003, they are flush. 2003 Conahan gets
2 \$507,000, Ciavarella gets \$480,000. That number begins to drop
3 down afterwards, and then the payments start coming in from --
4 from Powell. And then you get to 2005, and they are flush
5 again because they are getting a million dollars from --
6 actually \$1.15 million from Mericle, and then it drops down
7 again. You can see by the curve that -- that the extorsions
8 come in between after they blow through the money that was
9 given to them by Mericle. That's when Mark Ciavarella in 2006
10 and Michael Conahan came to Robert Powell.

11 That's when Mark Ciavarella picked out -- pulled out
12 the piece of paper, and it had the amount of money that Luzerne
13 County paid to PA Child Care and Western PA Child Care, and
14 Mark Ciavarella said, I know how much money you're making, I
15 know you're making a lot of money and you can afford to pay us
16 and you owe me because I am the one who sent you the kids and
17 so you better start paying.

18 Now, that's extortion under color of official right,
19 and Judge Kosik will read to you and explain to you what
20 extortion under color of official right is -- will say in his
21 charge extortion under color of official right means that a
22 public official induced, obtained, accepted or agreed to accept
23 a payment to which he knew he was not entitled knowing that the
24 payment was made in return for taking, withholding or
25 influencing official acts.

1 The government may show the benefit was meant to be
2 given to the public official directly or to a third party who
3 is not a public official but was acting in concert with the
4 public official. This is not a coincidence. It is a plan.
5 Mark Ciavarella buys a car on August 16th, 2006, the very same
6 day Robert Powell paid in cash one of the kickbacks or one of
7 the extortion payments to him. He goes out and puts down
8 \$5,000 in cash to lease a car. Where did the money come from?
9 When he was questioned on cross, he said that it didn't come
10 from extortion, that came essentially from an illegal campaign
11 contribution that they gave to me at the golf tournament and I
12 just stuffed it in my pocket back in November 2005 and I've
13 been paying things out anytime I need to go to dinner or
14 something like that and I didn't want to go to the bank.

15 The -- and then do you remember -- here's the man who
16 remembers detail after detail. He remembers a meeting on
17 October 16th, 2008 he remembers it because that was the day it
18 was a Penn State Michigan game and he was standing over a grill
19 out at the Penn State stadium and was cooking steaks when
20 Robert Mericle came back and he goes into detail -- minute
21 detail. So the question Bill Houser asked him was, really, who
22 gave you that campaign contribution, who gave you that 15 or 20
23 that you stuffed in your pockets? Do you remember what his
24 response was, I don't remember. The man can remember
25 everything. Suddenly he goes vague. Is that coincidence, or

1 was it part of the plan?

2 What is racketeering? Very briefly, racketeering is
3 you have to have an enterprise. What's the enterprise here?
4 It is the Luzerne County judiciary. And the enterprise is
5 simply the vehicle you get in to drive off to commit your
6 crime. That's all it is. You have to find there was some
7 vehicle they used. The vehicle we are charging is the Luzerne
8 County judiciary. I told you that earlier that racketeering is
9 like an umbrella offense. Underneath it are all these
10 underlying offenses.

11 The underlying offenses are also called predicate
12 acts. We've alleged dozens of predicate acts. You only have
13 to find two. And of all those acts there were two acts that
14 you have to decide were they part of racketeering activity. In
15 other words, are they random acts, or do they fit together in
16 such a way that it was part of the pattern and that pattern
17 given the nature of the offense, bribery, kickback, extortion
18 it was part of a racketeering activity and was it made possible
19 through the use of Conahan and Ciavarella's offices as judges.

20 The underlying -- these predicate offenses are all in
21 the same count. Count one is the racketeering count. All of
22 the predicate acts are in there. After that comes the
23 racketeering conspiracy, and after that come a bunch of
24 individual counts that you have to look at and look at the
25 evidence and decide whether or not he committed them. The

1 third feature common to racketeering is cash, which is obvious
2 and it is self-evident. It covers money in any form, check,
3 wire transfer or cash. It is one of the strongest proofs of
4 criminal intent is when a white collar criminal tries to
5 launder the money and clean it up to hide its origin and its --
6 its source. It's called money laundering. You heard Special
7 Brian Berentson testify as to the placement, the layering and
8 the integration of funds in a money laundering scheme.

9 And it is typical of criminal activity that dirty
10 money is often changed its character by going through banks and
11 businesses and so on to conceal the origin of funds, made to
12 look clean. That's what layering is. Now, look at some of the
13 examples of that. The Mericle payments, the Mericle payments
14 to Mark Ciavarella and to Michael Conahan. In each case there
15 was an attempt to mislead by mischaracterizing the nature of
16 the funds.

17 Each Mericle payment followed the direction of Mark
18 Ciavarella to make it appear as if the money went through
19 Robert Powell. Mark Ciavarella who was well aware that Powell
20 wasn't going to get any of the money, and he clearly didn't
21 even though the paperwork made it appear that he had, and the
22 million dollar payment from the PA Child Care building and the
23 \$150,000 payment that was the Western PA Child Care building
24 and the 150,000 for the PA Child Care expansion, that money is
25 paid to Pinnacle Group. It's treated on the books of Pinnacle

1 Group as rent. It's treated on Mark Ciavarella's tax returns
2 as rent.

3 Ciavarella knows well that it's a finder's fee from
4 Mericle. It is not rent. It is a reward. He knew it was
5 illegal. Each Mericle payment was disguised in different ways.
6 The reason -- we got lawyers and judges here -- they know it is
7 illegal. They are well aware that the Mericle payments were
8 kickbacks and rewards for his exercise of judicial authority,
9 putting together a -- a private detention center for public
10 use.

11 They are well aware that they are disguising money
12 and moving it through the financial system and that it's money
13 laundering. Lawyers and judges know what kickbacks and money
14 laundering is the same way that every doctor knows what an ear
15 infection looks like. It is common knowledge. These are
16 judges, Mark Ciavarella and his coconspirator, Michael Conahan,
17 attempts to clean up these transactions by making them look
18 like something they are not shows their criminal intent and
19 their consciousness of guilt.

20 Let's focus on the first transaction as an example of
21 the movement of funds. These movements are clearly designed to
22 sever Robert Mericle from Mark Ciavarella. First there was, I
23 recall, the registration and commission agreement that was
24 signed between Mericle and Powell which said that Powell was
25 getting all of the money and it was -- it was obviously false.

1 Then they take the \$610,000 and it goes from -- from
2 Mericle Construction down to Robert Matta. Robert Matta
3 transfers it down to Beverage Marketing of PA. It then goes
4 from Beverage Marketing of PA in dribs and drabs, \$330,000 goes
5 on January 28th, 2003, another 75,000 -- that's a check.
6 Another 75,000 is wire transferred to Mark Ciavarella's bank in
7 April of 2003. And then in June -- July of 2003, another
8 \$75,000 goes to Mark Ciavarella for a total of \$480,000.

9 Look also at the \$387,000 which goes from Mericle to
10 Robert Powell. He holds it, and then as time goes by after
11 paying -- he pays the \$10,000 to Matta, but he goes and he
12 takes the check -- he sends a check to -- from Vision Holdings
13 to Barbara Conahan, and, of course, it winds up going back to
14 Michael Conahan, and he winds up making \$456,000. Conahan pays
15 for the boat. That's the difference between the payments.
16 Conahan pays for the boat expenses because he wants to use it
17 in the future, and it's kind of a peace offering.

18 When you stand back and look at the entire
19 transaction once you know that it is designed to get all of
20 that money to Mark Ciavarella and his coconspirator, then the
21 layerings here become ludicrous. The only purpose is to hide
22 the money to take what is obviously dirty money and to clean it
23 up by making it look legitimate. Now, another aspect that
24 sticks out in this case is what I refer to as control. These
25 crime -- to pull these crimes off, you have to be a control

1 freak.

2 And white collar criminals choose areas of activity
3 -- criminal activity where they are in control. You can see
4 and get just the barest glimmer of this and how Robert Powell
5 was treated when you look at how the attorneys were treated in
6 Michael Conahan's courtroom. Do you remember that? Mr.
7 Ciavarella -- when he -- I'm sorry -- in Mr. Ciavarella's
8 courtroom. Mr. Ciavarella curtly cut off every attempt at
9 discussion. He refused to discuss the law. He refused to
10 follow the law.

11 He lied about his financial relationships with Robert
12 Mericle in one case and with Robert Powell in another case.
13 These people were parties or attorneys in the case. He ruled
14 for the people who were giving him the money. He was enraged
15 when he was asked by an attorney what his relationship was with
16 Robert Powell given the -- the unequal treatment this attorney
17 was experiencing in the court. And he tried to intimidate that
18 attorney into silence. That is control.

19 When he had the opportunity, Mark Ciavarella liked to
20 use his power and the power of the judicial office to step on
21 people. He stepped all over Robert Powell with a cynical
22 brutality. He had the power, and he used it to control people
23 to control events for his own purposes. He and Michael Conahan
24 had the power to control the routes that the money took to get
25 to them.

1 Now, I'm not going to spend time discussing the tape.
2 You heard it twice. All I'm going to say the most damning part
3 is on three or four occasions you will see in that tape that
4 Robert Powell in the presence of Mark Ciavarella and Michael
5 Conahan, they talk about the cash that he gave to Jill Moran to
6 give to them, and Ciavarella knows -- this is the Fed Ex boxes.
7 Ciavarella knows full well about the payments. Powell talks
8 about the cash, and Ciavarella talks about ways to disguise it.
9 They discuss the cash on three or four or five occasions.

10 Ciavarella says, well, wasn't that -- were you taking
11 legal fees out, could you -- basically the suggestion was can
12 you make it look as if it was a legal fee. He says, no, we
13 didn't do any legal fees, that lie isn't going to work. And
14 they continued to talk about ways of disguising it. And then
15 both Ciavarella and Conahan urged Powell to come to settlement
16 with Greg Zappala so there was no deposition and because they
17 feared the kickbacks are going to come out.

18 They are not worried, notice, about Zappala is going
19 it find out about the Mericle payments. They are not worried
20 because Mericle, the lowest bidder, had worked it into his
21 building costs and in essence Zappala had agreed to it when he
22 agreed to the contract. That was the best contract he was
23 going to get. He took it. They said it's not his money
24 because he agreed to that bid.

25 What has them scared is the money that Powell paid

1 them. What money was that? It was extortion payments.
2 Ciavarella says -- and as a matter of fact, Mark Ciavarella
3 says that the Mericle payments are the least of their problems
4 in a criminal investigation. What other criminal -- what other
5 problems are in the criminal investigation? Extortion, the
6 extortion of Robert Powell.

7 And you can basically -- I think after Mark
8 Ciavarella left to go to check out the FBI van and try to get
9 into it and look into it and so on, Conahan was in full panic
10 as they are heading out the door, says to Powell, so long as
11 you stick to your story on the condo rent, okay, and he,
12 Ciavarella, solves this problem, the Mericle payment, if Jill
13 got boxes, she kept them and if you gave her stuff to give me,
14 it was the Lenahan docs, it was documents, it was maps, it was
15 anything. You did things by courier, you never gave them to
16 her. Everybody in the room -- in that room knew it was false.
17 But look how he's making it up on the fly, it was documents, it
18 was maps, it was anything.

19 What does Robert Powell -- well, if that's our story,
20 we will stick to it. Conahan says we have to. It is laughable
21 to say that Mark Ciavarella sat through the meeting discussing
22 how to conspire to commit perjury and come up with alternative
23 explanations for the money and turn around and say at this
24 trial he had no idea that criminal acts were being committed
25 and that these were extortion payments when Mark Ciavarella was

1 the one who demanded the payments in the first place. We are
2 confident you will draw the obvious conclusion. I am going to
3 cut this off. We -- when I began this trial, I told you that
4 Mark Ciavarella appears before you cloaked in the presumption
5 of innocence, that he doesn't have to prove a thing to you,
6 that the burden is at all times upon the United States to prove
7 every element beyond a reasonable doubt. Well, that cloak has
8 been removed. That presumption is gone.

9 It's been removed by the tape-recorded conversations
10 where he's in discussing the cash with Powell. It's been
11 removed by the devastating cross examination by Bill Houser
12 when he got -- him to -- got Mr. Ciavarella to admit that his
13 spending habits were completely out of control and to admit
14 that he had paid Michael Conahan -- he split the fee with
15 Michael Conahan to pay Michael Conahan for his judicial acts in
16 getting PA Child Care built.

17 It's been removed by the obvious fact that the
18 finder's fee reward was for Ciavarella exercising his political
19 and his judicial authority. It's a clear understanding that
20 Ciavarella would be sending children to PA Child Care if Powell
21 played along. It's removed by the rent payment paying for a
22 shell of a condo. It's removed by concealment, by coincidence
23 by cash and control. This case has been proven beyond a
24 reasonable doubt.

25 The task will soon be yours to decide the fate of

1 former judge Mark Ciavarella. I ask you to listen very
2 carefully to my colleague, Al Flora, to the instructions on the
3 law that you will get from Judge Kosik. And then I will ask
4 you to find Mark Ciavarella guilty of every count in this
5 indictment. Thank you very much again from all of us for your
6 attention.

7 THE COURT: Okay. Can we see just two counsel on an
8 administrative matter off the record?

9 (A discussion was held off the record.)

10 THE COURT: We will take a very brief recess.

11 (A brief recess was taken.)

12 THE COURT: Please sit down.

13 MR. FLORA: Judge Kosik, Mr. Zubrod, Mr. Houser, Mr.
14 Consiglio, Mr. Ruzzo, Mark, and members of his family. Gordon
15 Zubrod is right about one thing. Any lawyer -- especially
16 including a prosecutor would be able to recognize a bribe or a
17 kickback.

18 MR. HOUSER: Your Honor, I object already. May we
19 approach sidebar?

20 THE COURT: Yeah, if you have to.

21 MR. HOUSER: We do.

22 (The following discussion was held at sidebar.)

23 MR. HOUSER: He's already talking about -- it appears
24 to me that what he's going to do is say that Mr. Zubrod
25 indicated that -- what happened with Mr. Ciavarella, Mr. Powell

1 and Mr. Conahan that Mr. Zubrod offered the opinion that was
2 not a bribe or a kickback. We have made the objection to that,
3 Your Honor. It's ruled that that's not an admission by the
4 government, and he's going to make that argument right now.

5 MR. FLORA: That is not correct, Your Honor. That is
6 not the argument I am going to make. What I am going to do is
7 refer to the Mericle plea, indicate Mr. Mericle has
8 acknowledged at the time of his plea he specifically
9 acknowledged that it wasn't a bribe or a kickback in any sense.
10 He acknowledged at the time of his plea he paid a finder's fee.
11 He's acknowledged at the time of his plea the judges did
12 nothing in their official capacity for him.

13 He acknowledged at the time of plea he simply
14 referred him for the construction of this project. He
15 acknowledged at the time of his plea that he got the job
16 because he was the lowest bidder, and at the time of the plea,
17 the government did not object to those admissions.

18 THE COURT: I think he has a right to say that.
19 That's argument.

20 MR. HOUSER: Okay. He started out by saying that --

21 THE COURT: Gordon Zubrod should know the difference.
22 He's labeling this a bribe as an extortion.

23 MR. HOUSER: Correct.

24 THE COURT: But he's saying at the time of Mericle's
25 plea the government didn't object to Mericle saying this is --

1 MR. HOUSER: That is not a problem. Once again what
2 we will do we will make a request for that instruction then
3 because we are talking about Mericle's intent.

4 (The discussion at sidebar concluded.)

5 MR. FLORA: In fact, not only would any lawyer or any
6 prosecutor recognize what constitutes a bribe or a kickback,
7 but you don't have to be a rocket scientist. Any contractor
8 would even know that. Any lay person would even be able to
9 recognize that. If you go back to the time that Mericle stood
10 in open court and made his plea of guilty before a judge and
11 that plea was under oath, he acknowledged with a prosecutor
12 standing there that this was not a bribe or a kickback, this
13 was a legitimate finder's fee, the judges did nothing in their
14 official capacity for him to get the job.

15 He acquired that job simply because the judges
16 referred him over to Powell and he got the job because he was
17 the lowest bidder. That's what he acknowledged at his plea.
18 When he made those acknowledgements at his plea, the prosecutor
19 sat there, didn't say a word. Robert Mericle came here into
20 court, testified under oath. And I asked him -- one of the
21 very last questions I asked him, as you sit here today and
22 everything you know, was the money you paid a kickback or a
23 bribe. And he gave you an unequivocal answer, no, it was not.
24 And despite that, despite that, the government comes here into
25 court today and argues an inconsistent position with that

1 evidence.

2 If Robert Mericle on that stand was not truthful
3 about this not being a kickback or a bribe, why didn't the
4 government challenge him? Why didn't the government say to
5 him, Mr. Mericle, how can you say that in light of all these
6 circumstances? They didn't challenge him because they
7 couldn't.

8 So today my client is now faced with fighting
9 inconsistent positions taken by the government. Members of the
10 jury, that is wrong. 1995, when Mark Ciavarella was elected
11 judge his power and authority was limited by the office that he
12 held. He didn't have the authority of the district attorney of
13 a county. He didn't have the authority of a state police to
14 enforce the laws. He didn't have the authority of the office
15 of the attorney general of the state. He was a low common
16 pleas judge in one county in Pennsylvania. That was it.

17 When he was elected in 1995, he had one motivation,
18 one goal, one dream, and that was motivation, goal and dream
19 that wasn't dictated at that time by Robert Mericle or Robert
20 Powell. They weren't even heard of at that point. And that
21 was to argue publically for the development of a new juvenile
22 detention facility to be owned by the county. That's what he
23 wanted. There was no conspiracy at that point. There was no
24 claims of finder's fees. None of that existed back then, and
25 that is what he continually argued for and got nowhere.

1 If he was a man of such great power, of stature as
2 the government would have you suggest, that facility would have
3 been built, but it never was. Mr. Zubrod in his opening tried
4 to lead you to believe that the closing of the county juvenile
5 detention facility was improper because it was a licensed
6 usable facility and the closure of this licensed usable
7 facility was part of this grand scheme. You heard Paul
8 McGarry. You heard what he said. When I asked him if I
9 described that juvenile facility as a dump, would that be a
10 correct characterization, he said, no, it was far worse than
11 that. The conditions were deplorable. And the actions of Mark
12 Ciavarella to try and close that facility, to take steps to
13 argue for the existence of a county facility had nothing to do
14 with Robert Mericle and the payment of a finder's fee.

15 His intent, Mark's intent, Mark's motivation existed
16 long before he had any meetings with Robert Mericle. The two
17 were unrelated. When Mark Ciavarella couldn't get the county
18 commissioners to build a facility, he took steps not in his
19 judicial capacity as a judge. In his judicial capacity as a
20 judge he's limited to when people come before him and he has to
21 make decisions. He took steps at that point in time to go see
22 Mike Conahan and say, Mike, if you know people out there in the
23 business world, put some people together to see if a private
24 development can be done because the county won't do anything
25 for our kids.

1 That request was pure. That request was innocent.
2 There was no evil motive or intent in that purpose whatsoever.
3 You heard testimony that Michael Conahan had outside
4 businesses, which he was allowed to have, and that's why Mark
5 Ciavarella went to Conahan because he had these outside
6 business interests because he knew these people, and Conahan
7 put a group of people together in a room in 2000 to try and do
8 the right thing, the Minoras, the Joyces, Bob Powell. They
9 were trying to develop a regional juvenile facility. There was
10 nothing wrong with that, nothing whatsoever.

11 They weren't acting in their judicial capacity as a
12 judge -- as a sitting judge. The government wants you to
13 believe that this whole conspiracy occurred sometime July 2001
14 when Robert Mericle came to Mark Ciavarella and said to Mark
15 Ciavarella, Mark, I am going to pay you a finder's fee. The
16 government wants to believe this whole conspiracy started
17 somewhere around July of 2001 when Robert Powell supposedly had
18 a meeting with Mark Ciavarella and Michael Conahan and talked
19 to them about the existence or the need for a guarantee
20 placement agreement.

21 If you look at the facts and you look at the records,
22 you're going to find the sequence of events to which they are
23 alluding to does not make any sense. Number one, why would
24 Robert Powell approach Mark Ciavarella in July of 2001 and
25 indicate to him that he was going to get a finder's fee at that

1 point when, number one, the land for the facility wasn't even
2 bought. They didn't know where the facility was going to be or
3 if there was going to be a facility at that point. Number two,
4 they didn't even have the financing in place at that point.
5 Number three, Robert Mericle didn't even have a signed
6 construction contract at that point assuring him that he would
7 get the job.

8 So how could it be in July of 2001 that Robert
9 Mericle would go to Mark and say to Mark, you're going to get
10 this finder's fee when none of those things are in place? The
11 other thing, Robert Powell, in July of 2001 -- why would he go
12 to Mark Ciavarella and Mike Conahan at that point and say to
13 them, here's a copy of a guarantee placement agreement, I need
14 this signed? He wouldn't even know at that point what the
15 requirements are of the bank that's going to give the
16 financing.

17 They didn't even have the land picked out at that
18 point. It makes no sense that those meetings could have even
19 happened at that point in time. If you look at the S&T Bank
20 loan commitment agreement dated the latter part of January
21 2002, you're going to find that that agreement requires a
22 number of things including a 20-year guarantee placement
23 agreement, a detention center operating agreement. You're
24 going to find those things in that guarantee agreement which
25 they didn't even know about in July.

1 What makes sense is after -- after they get the S&T
2 Bank commitment letter, that's when they go to Michael Conahan,
3 and that's when Bob Powell says to Michael Conahan, I need a
4 guarantee placement agreement. You heard Mark Ciavarella
5 testify that he wasn't in that meeting and that Mike Conahan
6 signed that agreement on his own. Once that agreement was
7 signed, that agreement in many ways was no different than what
8 other judges in the other part of the state have done with
9 regards to financing of Western PA Child Care, and you will see
10 documents signed by president judges of other counties
11 guaranteeing placement of children at the Western PA Child Care
12 facility.

13 It was utilized for financing purposes only, and
14 quite frankly the document signed by Judge President Conahan of
15 a million a year, that was a far better deal than what the
16 county signed in terms of the lease in November 2004. Bob
17 Powell never testified that either Mike Conahan or Mark
18 Ciavarella tried to strong arm him to hire Robert Mericle.
19 There is no testimony on that. There's no testimony that Mark
20 Ciavarella or Mike Conahan tried to influence Bob Powell in any
21 way in hiring Robert Mericle for that job.

22 The only testimony that you have in court before you
23 is that Robert Mericle got that job because he was the lowest
24 bidder and because Mark Ciavarella simply as his friend
25 referred him to Bob Powell. You got to remember something

1 here. If a person is elected a judge, is that doesn't mean
2 they are a judge 24 hours a day. That doesn't mean that you
3 don't have friends, they don't have private lives. That
4 doesn't mean they can't refer somebody for a job or something
5 like that. When they do those things, they are not acting in
6 their judicial capacity. They are acting as people, civilians.
7 Their roles are limited, and their role is limited to when they
8 take the bench and they make decisions, and that is it.

9 The government refers you to the meeting when Robert
10 Powell goes to Mark Ciavarella's office -- Mericle goes to Mark
11 Ciavarella's office and they have discussion at that point in
12 time about these commission agreements and what was said. You
13 have to remember something. At that point Mark Ciavarella was
14 livid with Robert Mericle. He was livid from the standpoint
15 that Robert Mericle might have done something which wasn't
16 correct and wasn't truthful. Mark Ciavarella was concerned
17 that if there was anything done other than to show that
18 commission agreement was going to him that that was wrong.
19 That's what he was concerned about in that meeting.

20 And that's why he told Robert Mericle as he was
21 leaving, yes, take a look at your records but remember one
22 thing. Don't lie to the government. Don't lie. That doesn't
23 suggest any attempt to cover up anything under any
24 circumstance. Mark Ciavarella tells you the first time he
25 believes the meeting occurred when he finds out about this

1 finder's fee is in April of 2002. And if you look at the
2 sequence of events, that's what makes sense because it is by
3 then that the land is bought, that the financing is placed in
4 place and Mericle has a construction agreement in hand, and
5 that's when he would go to Mark Ciavarella and tell him about
6 the finder's fee, not before. When he went there and told Mark
7 Ciavarella, Mark Ciavarella says, yes, I went to Michael
8 Conahan, told Michael Conahan about it and I gave him a portion
9 of it not because somebody was trying to do something
10 underhanded but simply because Michael Conahan originally got
11 the people together to try and arrange for the development of a
12 private facility. When Michael Conahan did that, he was not
13 acting in his judicial capacity. He was acting as a citizen
14 trying to do those things.

15 For you to find a bribe or a kickback, you would have
16 to say to yourselves that Robert Mericle's statements at the
17 time of his plea that there was no bribe or a kickback,
18 statements which he made under oath and admitted to was a lie.
19 You would have to find that his testimony here where he said
20 there was no bribe or a kickback is a lie. You would have to
21 find that it's all right for the government to walk in with
22 inconsistent positions. I suggest to you, members of the jury,
23 you can't find those things.

24 It's Robert Powell. The government's entire theory
25 with Robert Powell rests on his state of mind, what he thought

1 these judges would do to him. You saw him on that witness
2 stand. You saw how I tried to cross-examine him. You heard
3 his words on that wire. Do any of you really believe that
4 anybody can push that man around, that anybody can bully that
5 man, that anybody could extort that man? I suggest he can't be
6 extorted. He tried to make you believe that Mark Ciavarella
7 and Mike Conahan were the two most powerful people around, that
8 they can do things the state police couldn't even do, that they
9 had more authority than the attorney general. Members of the
10 jury, that's ludicrous.

11 That makes absolutely no sense. And what proves it
12 makes no sense is when you actually look at the conduct of
13 Robert Powell supposedly when this extortion is going on, which
14 conduct by the way, is undisputed in this court. Robert Powell
15 while the extortion is going on, 2004, 2005, where does he take
16 his family for vacation? To the very condo owned by the people
17 extorting him. That makes no sense. 2005, Mark Ciavarella's
18 retention campaign -- the night of the election, who was at his
19 house -- at Mark's house? Robert Powell at the same time he's
20 supposedly being extorted.

21 2005, graduation presents being given to Mark's
22 children while he's being extorted. That makes no sense.
23 2004, through 2006, that period of time every Friday according
24 to Jill Moran he's over Mike Conahan's house having drinks. If
25 you're being extorted, why would you even be doing that stuff?

1 2006 in the summer Bob Powell and his family are at Mark
2 Ciavarella's house, and they are swimming. They are having a
3 good time. They are drinking beer. If you're being extorted,
4 would you engage in this type of activity with the very people
5 that are extorting you? I suggest, members of the jury, that
6 makes absolutely no sense. It's not credible. And, in fact,
7 it's ludicrous to suggest you would be extorted under those
8 types of circumstances.

9 There's testimony that Bob Powell, end of '04 tried
10 to get away from them by taking his boat to Costa Rica. Well,
11 the extortion supposedly started in the beginning of '04. Why
12 didn't he move his boat out sooner? Why did he wait a year?
13 When he goes to Costa Rica, who winds up going down there with
14 him? The very person that is extorting him, Michael Conahan.
15 Why? You want to get away from me, you want to get away from
16 the person that's extorting you, and the person who is
17 extorting you wouldn't be going on that trip with you. That
18 makes no sense. You heard testimony from Mark Ciavarella
19 basically indicating that even when -- when Robert Powell
20 pulled the boat out of there he left a small boat at a nearby
21 marina. He gave Mark Ciavarella the keys.

22 If you are being extorted, you don't do things like
23 that. That's what doesn't make any sense about this. It
24 doesn't make any sense about what Powell is saying. I want to
25 talk to you a little bit about the wire. We had that wire

1 played for you without interruption so we can get the full
2 flavor of what was being said there so you can get a full idea
3 of the content the way things were happening, and that's why we
4 played that wire to you. There's a couple things about that
5 wire that I want to point out to you. When Mark Ciavarella is
6 talking about Robert Mericle and what Robert Mericle may have
7 said to a federal grand jury, Mark Ciavarella was basically
8 taking the position, hey, Bob Powell, that wasn't your idea,
9 this was a legitimate finder's fee that was paid, I thought it
10 was legal. There's no story there. There's no makeup there.
11 When you listen to the words of those people surrounding that,
12 Mark Ciavarella was livid that Bob Powell was being wrongfully
13 accused of something and that's why he was livid. He knew if
14 Rob Mericle was going into court and saying this was Bob
15 Powell's idea, he made this whole thing up, he knew -- Mark
16 knew that wasn't true.

17 There's no story there. At one point during the
18 wire, and this is where it gets interesting, Conahan asks Mark
19 Ciavarella to leave the room. If this is a conspiracy,
20 something is going on, why do you ask him to leave? Why? When
21 you look at what was said once Mark left, Conahan at that point
22 and Powell -- they start talking about Jill Moran. They start
23 talking about boxes of cash. They start talking about their
24 story. They start acknowledging that Mark doesn't know about
25 how the rent is set up, and they say -- Conahan says, Mark is

1 our most credible witness because he doesn't know these things.
2 He doesn't know these things.

3 Members of the jury, there was something going on. I
4 suggest to you there was a backroom deal going on between Mike
5 Conahan and Bob Powell and Mark Ciavarella had no idea what was
6 occurring. Remember Jill Moran? She testified that Bob Powell
7 told her that the boxes were to go to Mike Conahan, never
8 mentioned Mark Ciavarella. There was no testimony -- they
9 lived side by side. There's no testimony here she was
10 instructed to take any boxes to Mark. There was one thing in
11 particular in that wire that is said at the very end, it gives
12 a strong indication that Conahan and Powell had something
13 going. It was this. Conahan: "And listen, you got to pull
14 Greg back, sell these things and say, Greg, whatever I owe you,
15 I owe you, and you and I will figure something out in the
16 future." There was something going on between those two
17 people.

18 When you look at the checks from Vision Holdings, the
19 way checks were made out, Mark Ciavarella had nothing to do
20 with that. Pinnacle Group was Conahan's idea. Mark was not
21 involved in the initial setup. He came up after the fact of
22 his wife. When the first payments were being made by Robert
23 Powell, Mark and his wife weren't a member of the corporation
24 at that point in time. Something is going on there. I further
25 suggest there was something going on between Conahan and Powell

1 is the testimony of Gina Carrelli, which went undisputed where
2 she said Bob Powell -- she had known for a long time, had made
3 statements that he was putting his money into that condo and he
4 is an owner of that condo. Bob Powell wasn't an owner of that
5 condo. He was Conahan's silent partner unbeknownst to Mark
6 Ciavarella. Mark Ciavarella never knew what was going on
7 there, and she gave you a further reason as to why he was a
8 silent partner. That's because he was planning to leave his
9 wife and he didn't want his name on anything and he was using
10 that corporation to funnel money through. That's what is
11 happening here.

12 The prosecution has every opportunity to recall
13 Robert Powell. They let it go. They let it go. They want you
14 to believe that Robert Powell was this meek man, can't stand up
15 to anybody, who has no influence in the community. And Gina
16 Carrelli told you the extent of the influence and power he had.
17 She told you about the time she went up to the Hazleton airport
18 and drove to the tarmac to pick up her fiance who was a pilot
19 on a plane Robert Powell used, and when she got there she was
20 about 20 feet away and she saw Robert Powell handing two large
21 envelopes of cash to a high ranking state official.

22 This was a -- in November 2006, the very time -- the
23 very time Robert Powell says he is getting extorted and is
24 paying cash to Mike Conahan and Mark Ciavarella. They could
25 have put Robert Powell back on to dispute that. They didn't do

1 it. That testimony is uncontradicted here in court. Robert
2 Powell is no coward. He was a strong man. He was not one to
3 be easily extorted under any circumstances. The government is
4 standing on thin ice, but it's cracking all around because no
5 matter what they try and do about the way money was
6 transferred, about money not being disclosed, they can't get
7 around two things. The admissions Robert Mericle made at the
8 time of his plea that it was not bribe or a kickback,
9 admissions he made here in court and the ludicrous -- the
10 ludicrous position taken by Robert Powell that Mark Ciavarella
11 and Michael Conahan had so much power, he was afraid of them.
12 Mark Ciavarella couldn't do anything to Robert Powell.

13 He had contracts in place from 2003 on forward with
14 the county. By November 2004 he had a 20-year lease with the
15 county. Members of the jury, you heard all of those other
16 contracts that I read in through counties throughout the state
17 as well as outside of the state. Mark Ciavarella didn't do
18 anything to undermine those contracts. Robert Powell wants you
19 to believe that Mark Ciavarella or Mike Conahan had the ability
20 simply to pick up the phone and call somebody and all of a
21 sudden he would just lose all this business, all these
22 contracts would be cancelled. He would be put out of business?
23 That makes no sense under any circumstance.

24 Mark Ciavarella and his family, this is the most
25 important day in their lives. We understand that you as jurors

1 want to do the right thing. You're here to promote justice.
2 But this is not a case about whether Mark Ciavarella violated
3 the judicial canons of ethics. You are not here to decide
4 that. You are not here to decide whether he should have put
5 his financial information on a disclosure form that he filed
6 with the Administrative Office of the Pennsylvania Courts.
7 You're not here to decide those things. Those are ethical
8 matters left to other bodies. You are here to decide two
9 things, kickback or bribe or extortion. Why was the money
10 paid? If it wasn't a kickback or a bribe or wasn't an
11 extortion, how that money was transferred doesn't mean a thing
12 because it was legal money.

13 Whether he put information down on disclosure forms
14 doesn't mean a thing because that doesn't constitute a crime.
15 Mark Ciavarella told you the things that he did wrong. He told
16 you that he did commit income tax violations. And he was up
17 front with you about that. The commission of income tax
18 violations doesn't mean he took a bribe or a kickback. It
19 doesn't mean he extorted Robert Powell.

20 Based upon the evidence presented, I suggest to you,
21 members of the jury -- in fact, I ask you to find Mark
22 Ciavarella not guilty on any charges relating to bribery,
23 kickback, extortion, racketeering because the prosecution has
24 not proven their case beyond a reasonable doubt, which is the
25 highest burden of doubt that our system of justice has. Thank

1 you.

2 THE COURT: Thank you. The government reserved some
3 time for brief rebuttal.

4 MR. ZUBROD: Thank you, Your Honor. Very briefly,
5 ladies and gentlemen, I won't be long, but I need to respond to
6 this. Mr. Flora talks about this side deal that apparently
7 existed between Mr. Powell and Mr. Conahan. Well, Mr. Flora
8 implicitly acknowledges, yes, there was an extortion going but
9 the people doing the extorting -- it was Conahan and he was
10 doing it to Powell. Well, if Conahan was the one who had some
11 side deal with Powell at the same time he was getting money
12 from him, why did he need Ciavarella? He needed him because
13 the whole hammer that was held over Robert Powell and his PA
14 Child Care and Western PA Child Care was that Ciavarella was
15 the one with the power to send kids to PA Child Care.

16 As a matter of fact, the -- the -- he could have cut
17 him off at any time. Remember the amount of money that is
18 being sent that Pat Owens said in those -- in the years PA
19 Child Care and Western PA Child Care were sent -- and
20 Mid-Atlantic Youth Services got over \$30 million from Luzerne
21 County. That's what gets cut off, and if -- they say that the
22 contract is set with the county. They have the power to come
23 in and cut that off any time. Robert Powell said he didn't
24 think the contract was enforceable because they can come in and
25 terminate based on what they perceive the best needs of the

1 child. This thing about the Mericle plea, Mericle was
2 consistent with what he said in his plea. At trial when he
3 kept saying, you didn't think -- he was being cross-examined --
4 you didn't think this was a crime, you didn't think this was a
5 bribe, you didn't think this was a kickback and Mericle kept
6 saying, to me, I was giving Judge Ciavarella a reward that I
7 thought was legal. Whether it was legal, to me I thought -- I
8 thought it was legal -- whether it was legal for Judge
9 Ciavarella to take it, I'm not a lawyer, I don't know those
10 things. And just about anybody in law enforcement and public
11 office including myself could testify to the fact that you go
12 in all the time to places and are told, this is on us, thank
13 you for what you're doing. Every time you got to go back and
14 say, I know you don't think anything is wrong with this, but it
15 would be a crime for me to take that money. So the issue is
16 not -- the issue at the plea was what was in Mericle's mind.

17 This was Mericle saying what he did. The Mericle
18 plea, Mericle stated that it was his intent to -- to give a
19 reward and he does that in private business all the time and
20 private business. There's nothing wrong with that. He wasn't
21 stating what was going on in Judge Ciavarella's mind. He was
22 stating what was going on in his mind. And I note that they
23 keep hammering on that first moment when he gets Robert Mericle
24 and Robert Mericle comes to him -- look at all the things
25 surrounding it after that. Let's use Powell as a conduit.

1 It's clear Judge Ciavarella knows he's getting an income that
2 he has no right to and that there is an aspect where he is as a
3 judge going ahead and he is performing acts which ultimately
4 get the child -- the PA Child Care built, youth detention
5 center in Luzerne County that the public is about to give \$30
6 million to. That's not using his judicial authority to do it?

7 Mericle when he said no quid pro quo and so on, do
8 you remember Mericle did not plead to a bribery charge which
9 would be a quid pro quo? He pled to covering -- helping cover
10 up knowing -- getting involved with Ciavarella knowing that tax
11 fraud was being committed. There's no quid pro quo in tax
12 fraud, but there is in bribes. He didn't plead guilty as to
13 bribery or kickbacks.

14 Lowly common pleas judge in one county? They try to
15 make you believe he's more powerful than the Pennsylvania State
16 Police, more powerful than the deputy attorney general, more
17 powerful than the district attorney? Well, who did all these
18 people have to come to in Luzerne County to accomplish their
19 purposes? They had to come to the judges. As to Luzerne
20 County, these were extraordinarily powerful men. As to PA
21 Child Care, Mark Ciavarella was all powerful because he was the
22 one who decided whether the kids went there or not. He had the
23 power really of life and death over PA Child Care.

24 And you -- you may recall differently. I said
25 nothing about a licensing, practice or anything. Basically I

1 told -- talked about the fact that he held the power over PA
2 Child Care. The -- the suggestion that there's only -- there's
3 no judicial authority unless he has his robe is completely
4 false. Judges have official duties. They have discretionary
5 duties. But in this case PA Child Care directly affected and
6 impacted upon his official duties as a judge because he was
7 going to be sending kids there and he's getting money back from
8 them in sending kids there. The owner of it is buying in on a
9 \$785,000 condominium down in Florida. And that doesn't have
10 anything to do with his official duties? That is laughable.
11 Why July of 2001?

12 MR. FLORA: Your Honor, I object. This is way beyond
13 rebuttal.

14 MR. ZUBROD: It is exactly what his argument was.

15 THE COURT: Listen, objection is overruled. Just
16 take that into account.

17 MR. ZUBROD: Yes, sir, I will. Let's go on. Other
18 placement guarantee agreements means the other placement
19 guarantee agreements did the same exact same thing? They did
20 not do the same thing. And if you're interested in that, I
21 don't think it hangs one way or the other. But if you're
22 interested in that, there's significant differences in that.
23 If you compare these agreements with the Luzerne County
24 placement agreement, you will find the other guarantee
25 placement agreements are records of counties and they are

1 available for anybody to look at.

2 In Luzerne County this was hidden so nobody could
3 look at it and no one would know about. It's not only hidden
4 from the county, it's not only hidden from the public, the
5 Luzerne County agreement was hidden from the county
6 commissioners. The other placement agreement guarantees did
7 not commit funds to pay for the private center. The Conahan
8 guarantee agreement commits the county to pay \$1.3 million over
9 20 years guaranteed. The president judge has no power to
10 commit county funds, and yet he does it in Luzerne County.

11 You will look at the other ones, and there's no
12 commitment of funds because they know they don't have the
13 authority to do it. The key difference is the other county
14 placement agreements don't come with million dollar finder
15 fees. Again, it appears the defense is attempting to deflect
16 attention away from Mr. Ciavarella and his behavior.

17 You have to decide this case based upon the evidence
18 as it points to Mr. Ciavarella, not what is done in other
19 counties which is radically different than what was done in
20 Luzerne County. The statement about the Ciavarella children
21 and -- they essentially corroborated Powell's testimony that he
22 had a very close relationship with Mr. Conahan. And I think
23 Mr. Stahl said Powell was friends with Conahan and secondarily
24 with Mr. Ciavarella. Does it strike -- and the testimony was
25 fairly uniform.

1 Right up until 2005, as I recall the testimony, that
2 these things were going on that the -- that there were
3 relationships. Do you remember Powell said by 2005 they got
4 another million dollars, I thought I was free, I thought this
5 was all behind me? And he went out of his way -- it seems to
6 be sucking up to Conahan and Ciavarella trying to get them to
7 leave him alone. Powell said he was desperate hoping they
8 would leave him alone. Was this part of the effort to leave
9 him alone? I don't know. But I don't think the fact that
10 Robert Powell refused to put down Mr. Ciavarella in front of
11 his children doesn't tip this case one way or the other. It
12 shows he refused to say something nasty about them to his
13 family.

14 Jill Moran said that in late summer of 2006 there was
15 some violent breach between Conahan and Ciavarella on one side
16 and Powell on the other, it was deep, it was bitter and Powell
17 told her that I'm done with these people, I can't -- I can't
18 deal with them anymore. Jill Moran had no dog in this fight.

19 The Costa Rica trip -- you remember the boat was
20 moved in 2004 and he was flying down with friends in -- I think
21 it was 2005 or 2006 -- and this was after the million dollar
22 Western PA Child Care fee had been paid. And really Conahan in
23 an apparent attempt to bury the hatchet, I will pay my own way,
24 can I come down with you. He said, fine, he came down and
25 Conahan had no contact with him while he was down there.

1 The -- the -- I don't know what to do with the
2 statement about Gina Carrelli that -- do you remember that
3 angry young woman that testified Robert Powell took a ride in
4 her fiance's plane? She was adamant it was her fiance's plane,
5 never mind the fact that Robert Powell testified that her
6 fiance, Robert Marsicano was hired to fly his plane and to run
7 his rental service, 40 Degrees North. She only got out -- she
8 is the only one who got out to drive out to the plane. It was
9 in the evening. It was in the late fall this occurred. She
10 saw Robert Powell give two letter sized envelope she said
11 filled with cash to a high ranking legislator in the dark at a
12 distance of 20 feet and she had no idea what it was for.

13 And she doesn't discuss it with anybody. She's a
14 close friend of Theresa Conahan. She doesn't discuss it with
15 her boyfriend. She shows up in the middle of trial to tell
16 this story. Now, in his direct testimony Robert Powell said,
17 yeah, I gave other people cash. So his testimony is consistent
18 with what Ms. Carrelli is saying. So this evidence doesn't
19 strike me as contradictory. But it does strike me as
20 implausible for this reason. She first said that Powell told
21 her he owned a condo in Jupiter, Florida and told her come
22 down. When she was pressed on it, said she was present at a
23 conversation between Powell and Barbara Conahan and Cindy
24 Ciavarella. This was my recollection of it.

25 Your recollection counts. She said, Powell was

1 saying they get the penthouse condo and Powell seemed angry at
2 the time. He said, I'm the one paying for this condo, not you.
3 Well, my understanding was that was their condominium and they
4 were just renting it. He's basically saying, I'm one the
5 paying for the condo corroborating the fact he's paying and he
6 doesn't like the fact he has to pay. What did he mean by that?
7 They are the ones paying the mortgage on the condo, Conahan and
8 Ciavarella. He's angry and complaining he's the one who is
9 making the payments.

10 THE COURT: Excuse me. I would like to interrupt
11 you.

12 MR. ZUBROD: Yes, sir.

13 THE COURT: You used your time.

14 MR. ZUBROD: May I have 60 seconds, sir?

15 THE COURT: Sure.

16 MR. ZUBROD: Thank you. In that same conversation he
17 says -- Ms. Carrelli says, this gentleman, Powell, is going to
18 leave his wife and so he's using Conahan to funnel all of the
19 money through. Is there anybody so stupid that they would go
20 to two women who are friends with his wife and say, I'm going
21 to leave my wife, I am going to hide the money here? Also -- I
22 mean you may do that with a guy. You'd never do with that a
23 woman. That would be stupid.

24 And finally, the -- the issue of they couldn't -- the
25 defendant could not explain on the stand all of this thing

1 about the money, how Robert Powell makes out on this at all.
2 All of the money goes to them. They are keeping all of the
3 money. They are paying the thing off. Ladies and gentlemen,
4 look, let's sum it up this way. You took an oath when you came
5 in here that you would decide this case basically upon the
6 evidence and upon the -- -- the instructions that you get from
7 Judge Kosik. And the public has placed its trust in you that
8 if the evidence isn't there you will acquit, but if the
9 evidence is there, the trust has been placed in you that you
10 will convict. You took that oath. And today I am holding you
11 to that promise that you base this decision solely upon the
12 evidence you heard, you base this decision solely upon what you
13 hear from Judge Kosik about the law. And then and only then
14 will justice be done. Thank you.

15 THE COURT: Thank you. Ladies and gentlemen, you're
16 sitting almost an hour. We will take a brief recess again, and
17 I will start the charge. And then we will adjourn at noon, and
18 I will complete it after the luncheon break. So we will break.

19 (A brief recess was taken.)

20 THE COURT: We will start this charge so we can break
21 for lunch and then come back and conclude the charge and allow
22 the jury to commence deliberation at the earliest possible hour
23 this afternoon.

24 At this point, you have not only heard all the
25 evidence that's going to be presented in this case but, in

1 addition, the closing arguments of counsel, and soon the jury
2 will be called upon to perform its function of arriving at a
3 verdict. Can you hear me?

4 At this juncture, it's the Court's duty to instruct
5 you as to your function as a jury and tell you how you are to
6 go about it and give you the law that controls in a case such
7 as this. Everything I do is intended to be a guide to the
8 jury. The Court's charge is extemporaneous and other parts in
9 the interest of accurately communicating the law will require
10 some reading. That's the unfortunate part of the Court's
11 charge.

12 Initially, I tell the jury there are four basic
13 sources to which a jury can turn in arriving at a verdict. The
14 first of these is your general knowledge, which includes your
15 experience in life, your education and, of course, your common
16 sense. We come from various walks of life, and that's the
17 magic about the jury system. You have different experiences,
18 and you must draw upon that variety in consideration of the
19 evidence that's been presented in this case. You have a number
20 of minds reaching a common judgment, and it's not left up to
21 one individual such as a judge to decide what's right and
22 what's wrong. Next, you're to consider the evidence.

23 By evidence, I mean only that which was produced in
24 this courtroom whether from witnesses, tapes that you heard or
25 stipulations. There were many stipulations, as you know,

1 particularly as to exhibits.

2 Those will be taken out with the jury. Next, you're
3 to consider the arguments of counsel. In this case counsel are
4 trained in the law, and they are experienced lawyers. And they
5 appeared as advocates at the end of the trial as in this case,
6 and they argued from the evidence. And they have a right to
7 argue from the evidence in order to persuade the jury that
8 their client and their cause should be accepted by the jury in
9 arriving at its verdict.

10 Although they have a right to argue from the evidence
11 and sometimes press opinions, and we caution they were not
12 witnesses in this case and they are simply to rely on facts and
13 their opinions but not evidence in the case, they are entitled
14 to argue from their recollection of the evidence. And if it
15 conflicts in any way with what the jury recollects occurred,
16 obviously your recollections have to control. The same would
17 apply to me if I elected to address any evidence in this case,
18 and I don't propose to do that. It's not that long of a case.
19 Finally, as a source you have the judge's charge.

20 We have a duty to correctly communicate to you the
21 law applicable in a case such as this. And the Court or jury
22 may not agree with the law that we're dealing with, but it's
23 our duty and your duty to accept the law and to apply it to the
24 facts in this case. Your primary basic duty of the jury is to
25 determine the truth of the facts in this case. You're the sole

1 judges of the facts and any logical inferences which may be
2 drawn from the facts as you find them to exist.

3 In doing so, a jury has to recall all of the evidence
4 that was presented in the case and give due consideration and
5 decide for themselves that which is important and which is not.
6 And at various times I think I instructed the jury you have to
7 keep an open mind until all the evidence is in before you
8 evaluate it and decide what it is you are going to believe or
9 disbelieve.

10 And in doing so, in determining what the true facts
11 are, you of necessity have to have resolve conflicts in the
12 evidence. These conflicts may be natural. All people do not
13 hear or see the same thing, and yet they can be truthful. On
14 the other hand, some conflicts may be deliberate, but that's
15 your function to decide the truth and the lack of truth in
16 anything that was presented to you. We tell you as to any
17 evidence -- any witness' testimony that you can accept part,
18 reject part or all of any witness' testimony, or you can accept
19 all of any witness' testimony.

20 It's important you give fair consideration to
21 everything that was presented, and remember that it's your
22 recollection and your recollection alone that must guide your
23 determination in this case. In every case, there's an issue of
24 credibility and in where witnesses testified the law states
25 that the jurors are to pass upon the credibility or

1 believability of what you have heard presented in the
2 courtroom.

3 Accordingly, you are the sole judges of whether a
4 witness' version of the facts is to be credited. You say, how
5 do we determine credibility? The law says you may consider the
6 appearance of that individual during the trial, the manner in
7 which that person has testified and the reasonableness of the
8 testimony. All these attest to the general demeanor of the
9 individual in their appearance in the trial. You may also
10 mentally inquire as to each witness' testimony whether or not
11 it had the ring of truth.

12 Did the witness have a chance to know or to observe?
13 Was the testimony corroborated by other evidence in the case?
14 Did the witness have an interest in the outcome of the case?
15 And that may be a common occurrence, but it doesn't mean that
16 that person is going to be untruthful. Did the witness permit
17 their interest in any way to color or to bias their testimony?
18 All of these things fall in the category of common sense and
19 your experiences in life in determining whether someone is
20 being truthful or untruthful. Where there are differences --
21 and there are in every case -- jurors have a duty to reconcile
22 those differences if you can. And if you cannot, then you must
23 determine if somebody was being untruthful or just coloring
24 their testimony.

25 The weight to be given to the evidence is your

1 responsibility. Weight is not related to the number of
2 witnesses on either side where such exists. Weight of the
3 evidence is based on what the jury decides it is going to
4 believe. There is a maxim in the law which is almost as old as
5 the law itself. It says false in one thing, false in
6 everything. In its application to the trial of a case in a
7 court of justice it means if you find any witness was not
8 completely truthful in testifying, you're at liberty to
9 disregard the whole of that witness' testimony.

10 Testimony of a witness may be discredited or
11 impeached by showing that that person has previously made
12 statements which are inconsistent with what they presented from
13 the witness stand. And the earlier contradictory statements
14 are admissible only to impeach or reflect on the credibility of
15 the witness unless the previous statements are something that
16 was said under oath at any other time, and then you have a
17 choice to determining whether you want to believe what was
18 previously stated under oath or what was stated under oath
19 during the course of the trial.

20 In this case, as in most cases there are two types of
21 evidence that you may properly consider . One type of evidence
22 is called direct evidence, and it's where a witness testifies
23 to what they saw, what they heard or observed. In other words,
24 when the witness testified about what is known to him of his
25 knowledge or her knowledge by virtue of their senses as to what

1 they, see feel, touch or hear, that's called direct evidence.
2 Circumstantial evidence is evidence which tends to prove a
3 disputed fact by proof of other facts.

4 In this case, you heard audio recordings that were
5 received in evidence, and you are given written transcripts of
6 the recordings. At the time I instructed you how to consider
7 that, and I must reiterate that the transcript themselves are
8 not evidence in the case. They were given to you only as a
9 guide to help you to follow what was being said.

10 The recording themselves -- recordings themselves are
11 the evidence. And if you notice any differences between what
12 you heard on the recording and what was in the transcript, you
13 must rely on what you heard and not what you read. And if you
14 could not hear or understand certain parts of the recordings,
15 you must ignore the transcript if those existed. In this case
16 we also had some charts and summaries.

17 The charts I don't believe were identified and,
18 therefore, are not in evidence. But there were summaries
19 testified to and given to you in order to help explain facts
20 disclosed by other records in the case. Such summaries,
21 however, are not in and of themselves evidence or proof of any
22 facts unless admitted into evidence. And if such exists and
23 they are not admitted in the evidence, then you cannot consider
24 them.

25 The defendant in this case has taken the witness

1 stand. Obviously, the defendant has a deep personal interest
2 as a result of this prosecution. This interest may create a
3 motive for false testimony. In appraising the defendant's
4 credibility, you may take that into account. It by no means
5 follows that certainly because a person has a vital interest in
6 the end result that that person is not capable of telling a
7 truthful and straight forward story. It is for to you to
8 decide to what extent, if any, the defendant's interest as
9 affected or colored his testimony.

10 Ultimately, the defendant's credibility should be
11 judged by you in the same way as you judge the testimony of any
12 other witness in this case. This is a criminal case as you
13 know. And in all criminal cases, the defendant comes into
14 court cloaked with the presumption of innocence. This
15 presumption stays with the defendant through all stages of the
16 trial including your deliberations until such a time after
17 consideration of all of the evidence, arguments by the lawyers
18 and the charge of the Court, the jury concludes that the
19 defendant is guilty beyond a reasonable doubt.

20 The United States in this case has the burden of
21 proof. This burden of proof never shifts to the accused. A
22 defendant has no obligation to do anything in the criminal
23 case. We reiterate that even though you heard it more than one
24 time during the history of this trial. The government is
25 required to prove this case and each and every element of the

1 offense charged beyond a reasonable doubt, and those elements
2 will be described for you unfortunately in a lot of maybe
3 boring detail, but they will be very necessary for you to
4 consider.

5 If that's the burden of the government, it's natural
6 for you to ask them what is a reasonable doubt. It is a doubt
7 that would cause you or any person to pause and to hesitate in
8 a matter of importance to one regarding one's own affairs.
9 It's not a doubt you conjure up merely to escape the
10 consequences of returning an unpleasant verdict. It is a doubt
11 which is reasonable, and it's a doubt that's fairly arising out
12 of the evidence.

13 If after a consideration of the charges against the
14 defendant and the elements which are needed to be proved by the
15 government you have such a reasonable doubt as to any material
16 part of the government's case, it is your duty to resolve it in
17 favor of the defendant and to promptly acquit him. If you have
18 no such doubt, it's your equal duty to convict. You must
19 remember the government is not required to prove the case
20 beyond all doubt.

21 That would be virtually impossible, and proof is not
22 to be equated with mathematical certainty. There's an
23 indictment in this case, and it contains quite a few charges.
24 In order to try to communicate these charges to you, I will
25 start out by saying the indictment itself is not evidence. And

1 we told that to you on more than one occasion. In other words,
2 simply because a grand jury heard evidence -- one-sided
3 evidence presented by the government doesn't mean that a grand
4 jury's indictment is somehow evidence that the defendant is
5 guilty.

6 You might say otherwise, why would he be here when
7 the grand jury returned an indictment. That's not the case.
8 The standard of proof before the grand jury is entirely
9 different than what you have to consider in determining the
10 guilt of a defendant. While we have all of these charges in
11 the case, it's your duty to separately consider the evidence
12 that relates to each of those charges, and you must return a
13 separate verdict for each of those offenses.

14 Ladies and gentlemen, getting to those charges at
15 this point -- let me just say that in this indictment we have
16 quite a few charges alleged. But counts one and count two of
17 the indictment charge the defendant, Mark Ciavarella, with
18 offenses relating to Racketeer Influenced Corrupt Organizations
19 Act. Counsel sort of touched on that -- government's counsel
20 -- at the end of his closing statement. This is commonly known
21 to us as RICO Act because it charges -- RICO charges require
22 you to consider elements of a number of offenses that are also
23 charged in other counts of the indictment.

24 As a result, while RICO is charged in the first two
25 counts of this indictment and because it involves several other

1 charges within the indictment, I'm going to instruct you first
2 on those offenses that are required to be proved in RICO.
3 Counts three through six of the indictment commence with such
4 offenses, and count three to six charge the defendant, Mark
5 Ciavarella, with wire fraud.

6 Count seven through ten of the indictment charges the
7 defendant with mail fraud. Both wire fraud and mail fraud are
8 violations of federal law. In order to find the defendant
9 guilty -- incidentally, as I go through these charges and the
10 elements, I want the jury to remember that when we're finished
11 with this you're going to get this charge that I am reading.

12 You will have the benefit of the indictment, and we
13 noted in the indictment where the various charges commence so
14 you will have no difficulty in finding them. In order to find
15 the defendant guilty of these offenses, wire fraud and mail
16 fraud, you must find that the government proved three elements
17 beyond a reasonable doubt. The first two elements are the same
18 for both wire fraud and mail fraud. The first two elements the
19 government must prove beyond a reasonable doubt for wire fraud
20 and mail fraud are, first, Mark Ciavarella knowingly devised a
21 scheme to defraud the public of its right to the honest
22 services of Mark Ciavarella through bribery or kickbacks and by
23 materially false or fraudulent pretenses, representations or
24 promises wilfully participated in such a scheme with knowledge
25 of his fraudulent nature.

1 Second, that Mark Ciavarella acted with the intent to
2 defraud. The third element for the offense of wire fraud and
3 mail fraud are different. For wire fraud the third element the
4 government must prove beyond a reasonable doubt is that in
5 advancing, furthering or carrying out the scheme, Mark
6 Ciavarella transmitted any writing, signal or sound by means of
7 a wire, radio or television communication in interstate
8 commerce or caused the transmission of any signal or sound of
9 some kind by means of wire, radio or television communication
10 in interstate commerce. That comes from the statute.

11 For mail fraud, the third element the government must
12 prove beyond a reasonable doubt is that in advancing,
13 furthering or carrying out the scheme, the defendant used the
14 mails, a private or commercial interstate carrier or caused the
15 mails or a private or commercial interstate carrier to be used.
16 The first element which are applicable to both, the government
17 must prove beyond a reasonable doubt that Mark Ciavarella
18 knowingly devised or wilfully participated in a scheme to
19 defraud the citizens of Luzerne County, the citizens of the
20 Commonwealth of Pennsylvania or Judiciary of the Commonwealth
21 of Pennsylvania of the tangible right of honest services of
22 Mark Ciavarella through bribes or kickbacks, using materially
23 false or fraudulent pretenses, representations or promises.

24 A scheme is really a plan to accomplish that object.
25 Fraud is a general term which embraces all the various means by

1 which a person can gain an advantage over another person by
2 false pretense, suppression of the truth or the deliberate
3 disregard for the truth. A scheme to defraud is any plan
4 devised or course of action to deprive another of the tangible
5 right of honest services by means of false or fraudulent
6 pretense, representations or promises reasonably calculated to
7 deceive persons of average prudence. A public official or
8 employee owes a fiduciary duty of honest, faithful and
9 disinterested service to the public and to the government he
10 serves.

11 The public relies on officials of the government to
12 act for the public interest, not for their own enrichment. A
13 government official who uses his public position for
14 self-enrichment through bribery or kickback, breaches the duty
15 of honest services owed to the public and the government. So,
16 for instance, a public official who accepts a bribe or kickback
17 breaches the duty of honest, faithful and disinterested service
18 while outwardly appearing to be exercising independent judgment
19 in his official work, a public official instead has been paid
20 privately for his public conduct, thus the public and the
21 government are not receiving honest and faithful services.

22 In Pennsylvania where a person is a government
23 official and has a financial relationship with someone who will
24 benefit from the public employee's official actions, that
25 official has an affirmative duty to disclose information about

1 the relationship. If you find that the defendant engaged in
2 undisclosed bias decision making for personal gain through
3 bribery or kickbacks, that constitutes a deprivation of honest
4 services even if the public suffered no tangible harm. Active
5 fraud or deceit is not necessary. The intentional violation of
6 the duty to disclose provides the requisite deceit.

7 Accordingly, if a public official takes a bribe or kickback and
8 intentionally does not disclose the material information
9 regarding a conflict of interest and benefits financially, then
10 that official has deprived the public and the government of the
11 right to honest services.

12 Bribery and kickbacks involve the exchange of a thing
13 or things of value for official action by a public official, in
14 other words a quid pro quo, and you heard that statement means
15 this for that. Bribery and kickbacks also include offers and
16 solicitations of things of value in exchange for official
17 action. That is, for the payor, bribery and kickbacks in the
18 offer or agreement to provide a thing of value to a public
19 official in exchange for official action whether or not the
20 public official actually accepted the thing of value or agreed
21 to perform their perform official action. For the public
22 official, bribery and kickbacks include a public official's
23 solicitation or agreement to accept a thing of value in
24 exchange for official action.

25 Whether or not the payor actually provided the thing

1 of value and whether or not the public official ultimately
2 performed the requested official action, the public official
3 and the payor need not state the quid pro quo in express terms
4 for otherwise the law's effect could be frustrated by knowing
5 winks and nods. Rather, the intent to exchange may be
6 established by circumstantial evidence based on the defendant's
7 words, conducts and acts.

8 Bribery and kickbacks require the intent to effect an
9 exchange of money or other thing of value for official action,
10 but each payment need not be correlated with a specific
11 official act. The requirement that there be payment of a thing
12 of value in return for the performance of an official act is
13 satisfied so long as the evidence shows a course of conduct of
14 things of value flowing to a public official in exchange for a
15 pattern of official action favorable to the donor.

16 In other words, the intended exchange in bribery can
17 be this for this or these for those or this for that. Further,
18 it's not necessary for the government to prove that the
19 defendant intended to perform a set number of official acts in
20 return for the payments. All that must be shown is the
21 payments were made with the intent of securing a specific type
22 of official action in return. For example, payments may be
23 made with the intent to retain the official's services as a
24 needed base -- on a needed basis that whenever the opportunity
25 presents itself the public official would take specific action

1 on the giver's behalf. It is not a defense to claim that the
2 public official would have lawfully performed the official
3 action in question even without having accepted the thing of
4 value.

5 In other words, it's not a defense that the offer or
6 promise of anything of value was made to the public official in
7 exchange for an official action that is actually lawful,
8 desirable or even beneficial to the public. The offense of
9 honest services fraud is not concerned with the wisdom or
10 results of the public official's decisions but rather with the
11 manner in which the public official makes his or her decisions.

12 What the government must prove is the defendant
13 knowingly devised or participated in a scheme or artifice to
14 defraud the public and the government of the right to a public
15 official's honest services through kickbacks or bribes. Also
16 because people rarely for a single purpose, the giver need not
17 have offered or provided the thing of value only in exchange
18 for specific official actions, and the public official need not
19 have solicited or accepted the thing of value only in exchange
20 for the performance of official action.

21 If you find beyond a reasonable doubt that the giver
22 offered or provided a thing of value in exchange for the
23 performance of official action, then it makes no difference
24 that the giver may also have another lawful motive for
25 providing a thing of value. Likewise, if you find beyond a

1 reasonable doubt that the public official solicited or received
2 a thing of value in exchange for a form of official action,
3 then it makes no difference that that official may also have
4 had another lawful motive for soliciting or accept the thing of
5 value. The term official act includes any act within the range
6 of the official's duty of a public official and any decision,
7 recommendation or actions on any question, matter, cause,
8 proceeding or controversy which at any time may be pending or
9 which may by law be brought before any public official in such
10 public official's capacity.

11 Official acts include decisions or actions generally
12 expected of the public official. In addition, official action
13 includes the exercise of both formal official influence such as
14 a judge's performance and duties in court proceedings and
15 informal official influence such as the
16 judge's behind-the-scenes influence on the other judges or
17 employees of the judiciary.

18 Official action also includes a public official's
19 altering his or her official acts, changing the position which
20 he or she would otherwise have taken or taking action in his or
21 her official capacity that he or she would not have taken but
22 for the scheme. Anything of value includes things possessing
23 intrinsic value whether tangible or intangible that the person
24 giving or offering or the person soliciting or receiving
25 considers to be worth something. This includes sums of money.

1 In this case, the indictment alleges that the scheme
2 to defraud was carried out by making false or fraudulent
3 statements, representations, claims or documentation. The
4 representation which the government charges were made as part
5 of a scheme to defraud are set forth in the indictment. The
6 government is not required to prove every misrepresentation
7 charged in the indictment.

8 It is sufficient if the government proved beyond a
9 reasonable doubt that one or more of the alleged material
10 representations was made in furtherance of the alleged scheme
11 to defraud. However, you cannot convict a defendant unless all
12 of you agree at least one of those material representations.

13 A statement, representation, claim or document is
14 false if it is untrue when made and if the person making the
15 statement, representation, claim or document or causing to be
16 made knew it was untrue at the time. A representation or
17 statement is fraudulent if it was falsely made with the
18 intention to deceive.

19 In addition, deceitful statement or half truths or
20 the concealment of material facts or the expression of an
21 opinion not honestly entertained may constitute false or
22 fraudulent statements. The arrangement of the words or the
23 circumstances in which they are used may convey false and
24 deceptive appearance. The deception need not be premised upon
25 spoken or written words alone.

1 If there is deception, the manner in which it is
2 accomplished is immaterial. The deceit may consist of the
3 concealment of things of value that the public official has
4 solicited or received or the public official's implicit false
5 pretense to his governmental employer that he remains loyal to
6 his employer's interest. The failure to disclose information
7 may constitute a fraudulent representation if the defendant was
8 under a legal, professional or contractual duty to make such a
9 disclosure, and the defendant actually knew such a disclosure
10 ought to be made and the defendant failed to make it.

11 The false or fraudulent representation or a failure
12 to disclose must relate to a material fact or matter. A
13 material fact or matter is one which would reasonably be
14 expected to be of concern to a reasonable and prudent person in
15 relying upon the representations or statements in making an
16 assessment as to whether or not the public official was, in
17 fact, providing honest services to the citizens and the
18 judiciary.

19 This means that if you find that a particular
20 statement of fact was false, you must determine whether that
21 statement was one that a reasonable person might have
22 considered important in making his or her assessment. The same
23 principle applies to fraudulent half truths or omissions of
24 material facts.

25 In order to establish a scheme to defraud, the

1 government must also prove that the alleged scheme contemplated
2 depriving another of the intangible right of honest services.
3 However, the government is not required to prove Mark
4 Ciavarella himself originated the scheme to defraud.
5 Furthermore, it's not necessary that the government prove that
6 Mark Ciavarella actually realized any gain from the scheme or
7 that any intended victim was actually defrauded of the right to
8 honest services of Mark Ciavarella.

9 In this case, it so happens that the government does
10 contend that the proof establishes that citizens and the
11 judiciary were defrauded of the right to honest services of
12 Mark Ciavarella and that he profited. Although whether or not
13 the scheme actually succeeded is really not the question. You
14 may consider whether it succeeded in determining whether the
15 scheme existed. So if you find beyond a reasonable doubt that
16 Mark Ciavarella alone or with the help of others devised or
17 wilfully participated in the scheme to defraud the citizens of
18 Luzerne County or the Commonwealth of Pennsylvania or the
19 judiciary of this Commonwealth of the tangible right to honest
20 services through bribes or kickbacks and by materially false or
21 fraudulent pretenses, representations or promises as defined
22 here, then you may find the first element to exist.

23 The second element that the government must prove
24 beyond a reasonable doubt is that Mark Ciavarella acted with
25 specific intent to defraud, and to act with intent to defraud

1 means acted knowingly and with the intention or purpose to
2 deceive or to cheat. In considering whether Mr. Ciavarella
3 acted with an intent to defraud, you may consider, among other
4 things, whether he acted with a desire or purpose to bring
5 about some gain or benefit to himself or someone else or with a
6 desire or purpose to deny the public or the government of its
7 right to honest services.

8 Wire fraud, the other offense. The third element to
9 show or -- that's required to show wire fraud, that the
10 government must prove beyond a reasonable doubt for wire fraud
11 is that in advancing, furthering or carrying out the scheme,
12 Ciavarella transmitted a writing, signal or sound by means of
13 wire, radio or television communication in interstate commerce
14 or caused the transmission of any writing, signal or sound by
15 some means of wire, radio or television communication in
16 interstate commerce.

17 The phrase transmits by means of wire, radio or
18 television communication means to send from one state to
19 another by means of telephone or telegraph lines or by means of
20 radio or television. The government is not required to prove
21 Mark Ciavarella actually used the wire communications in
22 interstate commerce or that Mark Ciavarella even intended that
23 anything be transmitted in interstate commerce by such a means.

24 However, the government must prove beyond a
25 reasonable doubt that a transmission by wire, radio or

1 television communication facility in interstate commerce was,
2 in fact, used in some manner to further or to advance or carry
3 out the scheme to defraud. The government must also prove
4 either that Mark Ciavarella used wire, radio or television
5 communication in interstate commerce or that he knew the use of
6 such would follow in the ordinary course of business. It's not
7 necessary that the information transmitted by wire, radio or
8 television communication in interstate commerce itself was
9 false or fraudulent or contained any false or fraudulent
10 pretense, representation or promise or contained any request
11 for money or thing of value.

12 However, the government must prove beyond a
13 reasonable doubt that the use of that facility in interstate
14 commerce furthered or advanced or carried out the scheme. Each
15 transmission of wire communication in interstate commerce to
16 advance or further or carry out the scheme or plan may be a
17 violation of the wire fraud statute. The next offense, ladies
18 and gentlemen, is in counts seven through ten dealing with mail
19 fraud.

20 The third element that is dealing with mail fraud
21 that the government must prove beyond a reasonable doubt for
22 mail fraud is that in advancing, furthering or carrying out the
23 scheme Ciavarella used the mails or private commercial
24 interstate carrier or caused the mails of a private or
25 commercial interstate carrier to be used. The government is

1 not required to prove that Mark Ciavarella himself actually
2 mailed anything or that he even intended that the mails would
3 be used to further or advance or to carry out the scheme.

4 However, the government must prove beyond a
5 reasonable doubt that the mails or private or commercial
6 interstate carrier were, in fact, used in some manner or to
7 advance or to carry out the scheme to defraud. The government
8 must also prove either that Mark Ciavarella used the mails or
9 that he knew the use of mails or private or commercial
10 interstate carrier would follow in ordinary course of business
11 or events.

12 The government must prove beyond a reasonable doubt
13 that the use of the mails or private or commercial interstate
14 carrier in some way furthered or advanced or carried out the
15 scheme. Each use of the mails to advance or to further or
16 carry out the scheme or plan may be a separate violation of the
17 mail fraud statute.

18 Now, with respect to the counts that I have just
19 addressed, I must tell the jury that if you do not find that
20 the government proved beyond a reasonable doubt that a bribe or
21 a kickback was paid in connection with the alleged wire fraud
22 and mail fraud counts, you must find Mark Ciavarella not guilty
23 of those offenses. We are going into the other counts from 11
24 to 20 when we get back from lunch. So we will you see back
25 here at 1:00.

1 (A lunch recess was taken.)

2 THE COURT: Please sit down. Starting after this
3 afternoon, the next instruction deals with counts 11 through
4 20. This morning we had a block of counts as well, and the
5 reason we had -- the instructions I gave you now are counts for
6 11 to 20 because as you will see when you examine the
7 indictment if you wish -- but I want to give you an example.
8 Eleven through 20 counts charging corrupt receipt of bribe or
9 reward -- and we will give you the instructions that apply to
10 each of those counts.

11 But I want to bring to your attention that the count
12 11 to 20 has the same charge, and in there it shows count 11
13 for payment from Vision Holdings, count 12, payment from Vision
14 Holdings, all of the way to count 20 of payment from Robert
15 Powell and in between the same thing. But the count numbers
16 are in the indictment, and they apply to different payments.
17 So what I am about to tell you applies from each of the counts
18 11 to 20, but the counts are different, as you will see in the
19 indictment, as to the amount in payment, okay.

20 Now, count 11 through 20 of the indictment charges
21 the defendant, Mark Ciavarella, with corrupt receipt of bribes
22 or rewards for official action concerning programs receiving
23 federal funds, which is a violation of federal law. And in
24 order to find the defendant guilty of this offense as to any of
25 the counts from 11 to 20, the elements that must be proved

1 beyond a reasonable doubt are first, that at the time of the --
2 as alleged in the indictment for each count, Mark Ciavarella
3 was an agent of the Commonwealth of Pennsylvania or Luzerne
4 County or the Luzerne County Court of Common Pleas or the
5 Administrative Office of Pennsylvania Courts. Second, that the
6 Commonwealth of Pennsylvania, Luzerne County or Court of Common
7 Pleas or the Administrative Office received federal funds in
8 excess of \$10,000 in a one-year period. Third, that Mark
9 Ciavarella accepted, agreed to accept, solicited or demanded
10 something of value from Robert Powell or Robert Mericle.
11 Fourth, that Mark Ciavarella acted corruptly with the intent to
12 be influenced or rewarded in connection with the official
13 action taken and intended to be taken by him in his capacity as
14 a judge of the Court of Common Pleas, and, five, that the value
15 of the business, transactions or a series of transactions to
16 which payment related was at least \$5,000.

17 First element -- the first element the government
18 must prove beyond a reasonable doubt is that at the time
19 alleged in the indictment Mark Ciavarella was an agent of the
20 Commonwealth of Pennsylvania or Luzerne County for the Court of
21 Common Pleas or the Administrative Office of the Pennsylvania
22 Courts. The answer to that is elected officials are agents of
23 the government which they were elected to serve. The second
24 element the government must prove beyond a reasonable doubt is
25 that in a one-year period the Commonwealth of Pennsylvania or

1 Luzerne County or those other agencies, the Administrative
2 Office of the Pennsylvania Courts received federal benefits in
3 excess of \$10,000.

4 To prove this element, the government must establish
5 that the Commonwealth and those other agencies received within
6 a one-year period of each date alleged in counts 11 to 20 of
7 the indictment benefits in excess of \$10,000 under a federal
8 program involving a grant, contract, subsidy, loan, guarantee,
9 insurance or some other form of federal assistance. Third --
10 the third element the government must prove beyond a reasonable
11 doubt is that Mark Ciavarella accepted, agreed to accept,
12 solicited, demanded something of value from Robert Powell or
13 Robert Mericle.

14 In this case, the United States alleges that Mark
15 Ciavarella accepted, agreed to accept, solicited or demanded
16 the payment of money. The government is not required to prove
17 that the thing of value that the defendant allegedly illegally
18 accepted, agreed to accept, solicited or demanded was federal
19 benefits or that the illegal acts directly affected the federal
20 benefits that the entity received. Rather, the government is
21 required to prove only the defendant illegally accepted --
22 agreed to accept, solicited or demanded a thing of value while
23 he was an agent of the entity which itself received \$10,000 as
24 a federal benefit.

25 Fourth element, must prove beyond a reasonable doubt

1 Mark Ciavarella accepted, agreed to accept, solicited or
2 demanded something of value corruptly and with the intent to be
3 influenced or rewarded in connection with some business or
4 transaction of the Commonwealth of Pennsylvania, Luzerne County
5 Court of Common Pleas or the Administrative Office of the
6 Pennsylvania Courts. To act corruptly means simply to act
7 knowingly and intentionally with the purpose either of
8 accomplishing an unlawful end or an unlawful result or of
9 accomplishing some otherwise lawful end or lawful result
10 influenced by the receipt of the thing of value.

11 Corrupt acts are ordinarily motivated by hope or
12 expectation of either financial gain or other benefits to one's
13 self. In considering this element, remember that the
14 government must prove that the defendant intended at least in
15 part to be influenced or rewarded, but the government is not
16 required to prove that those agencies or the administrative
17 office took any particular action.

18 Also if you find the defendant accepted the payment
19 with the intent to be rewarded for a decision already made, it
20 does not matter that the payment was not accepted or solicited
21 until after the transaction occurred. The fifth element. The
22 government must prove beyond a reasonable doubt is that the
23 value of the official actions to which the payment related was
24 at least \$5,000.

25 To establish this element, the government must prove

1 that Mark Ciavarella intended to be influenced or rewarded in
2 connection with any business or transactions or a series of
3 transactions of those agencies I have alluded to involving
4 anything of value of \$5,000 or more. If you find that the
5 business, transaction or series of transactions in question
6 have a value of at least five thousand, this element is
7 satisfied. The government is not required to prove that Mark
8 Ciavarella received at least five thousand. It is the value of
9 the business transaction or a series of transactions that the
10 bribe or reward was intended to influence or reward that is
11 important for the purposes of element.

12 Now, next we have counts 22 to 26 which indicate we
13 are making progress. These counts deal with the crime of money
14 laundering. Counsel have addressed that. Count 22 through 26
15 of the indictment charges Mark Ciavarella with money
16 laundering, which is a federal crime. In order to find him
17 guilty of this offense, you must find that the government
18 proved each of the following elements beyond a reasonable
19 doubt.

20 First, that on or about the dates alleged in the
21 indictment and thereto these instructions apply to each one of
22 those counts, and those counts will deal with a different
23 amount or subject. In order to find him guilty of this
24 offense, you must find the government proved each of the
25 following elements beyond a reasonable doubt, that on the date

1 or dates alleged in the indictment Mark Ciavarella conducted or
2 attempted to conduct a financial transaction which affected
3 interstate commerce. Second, Mark Ciavarella conducted a
4 financial transaction with the proceeds of a specified unlawful
5 activity as alleged in the count of the indictment. That is
6 honest services, wire fraud or bribery concerning programs
7 receiving federal funds or extortion under the color of
8 official right in violation of the statutes. Third, that Mark
9 Ciavarella knew the transaction involved the proceeds of some
10 form of unlawful activity, and, fourth, that he conducted the
11 financial transaction with knowledge that the transaction was
12 designed in whole or in part to conceal or disguise the nature,
13 location, source, ownership or control of the proceeds in
14 violation of the respective statutes.

15 Money laundering. The first element of money
16 laundering the government must prove beyond a reasonable doubt
17 is that he conducted or attempted to conduct a financial
18 transaction. The term conducts includes initiating, concluding
19 or participating in or concluding a transaction. The term
20 transaction means to purchase, sale, loan, pledge, gift,
21 transfer, delivery or other disposition of property with
22 respect to a financial institution. The term transaction means
23 a deposit, withdrawal, transfer between accounts or any other
24 payment transfer or delivery by, through or to a financial
25 institution by whatever means effected.

1 And the term financial transaction means any
2 transaction that I've just explained that term which in any way
3 or degree affects interstate commerce and involves a movement
4 of funds by wire or other means and involves one or more
5 monetary instrument or involves the use of financial
6 institutions which is engaged in or the activities of which
7 affect interstate or foreign commerce in any way or degree.

8 Now, the term interstate commerce as used in these
9 instructions means commerce between any combination of states,
10 territories or possession of the United States including the
11 District of Columbia. The government is not required to prove
12 only that the financial institutions or banks through which
13 financial transactions were conducted were engaged in or had
14 other activities which affected interstate commerce in any way
15 or degree.

16 It's not required to prove that the defendant knew of
17 or intended the effect on interstate commerce, merely that such
18 an effect occurred. The term proceeds means any property or
19 any interest in property that someone acquires or retains as a
20 result of criminal activity. Proceeds may be derived from an
21 already completed offense or from a completed phase of an
22 ongoing offense such as honest services, wire fraud or bribery
23 concerning programs affecting federal funds or extortion under
24 color of official right or bribery chargeable under state law.

25 I instruct you as a matter of law that the term

1 specified unlawful activity includes honest services wire fraud
2 in violation of the statutes. It includes bribery concerning
3 programs receiving federal funds, extortion under the color of
4 official right, bribery chargeable under the laws in violation
5 of the state law. I already explained the elements on the
6 honest services wire fraud. I've also explained the elements
7 of bribery concerning programs receiving federal funds in
8 violation of the statute, and I will explain the elements of
9 extortion under color of official right in violation of another
10 provision of the criminal law as well as bribery chargeable
11 under state law.

12 The third element that the government must prove
13 beyond a reasonable doubt is that in conducting a financial
14 transaction Mark Ciavarella knew that the property involved in
15 the transaction represented the proceeds of some form of
16 unlawful activity. To satisfy this element, the government
17 must prove that Mr. Ciavarella knew the property involved in a
18 transaction represented proceeds of some form of unlawful
19 activity and this is a felony offense under state, federal or
20 foreign law. The government is not required to prove that
21 Ciavarella knew what the unlawful activity was.

22 In this case, the government claims that Mr.
23 Ciavarella knew that the proceeds were derived from unlawful
24 activity which constitutes honest services wire fraud, bribery
25 concerning programs receiving federal funds or extortion under

1 color of official right, which are all felonies under federal
2 law.

3 The final element that the government must prove
4 beyond a reasonable doubt is that Mr. Ciavarella is -- in
5 conducting the financial transaction intended to conceal or
6 disguise the nature, source, ownership or the control of the
7 proceeds of the specified unlawful activity, that is honest
8 services, wire fraud, bribery concerning programs, federal
9 funds or extortion under color of official right may be
10 established by proof of Mark Ciavarella's actual knowledge by
11 circumstantial evidence or by the defendant's wilful blindness
12 were or purposeful ignorance. In other words, you're entitled
13 to find from the circumstances surrounding the financial
14 transactions or attempted financial transaction the purpose of
15 that activity and Mr. Ciavarella's knowledge.

16 If I emphasize a word or phrase, I don't mean
17 anything by the emphasis regarding the parties. I mean the
18 emphasis to mean that it's important to the charge. All right.
19 We have a money laundering conspiracy. I just instructed you
20 on what money laundering was. We also have a money laundering
21 conspiracy.

22 The United States Criminal Code makes it a crime for
23 anyone to conspire with someone to commit a money laundering
24 offense. Count 21 charges Mark Ciavarella with being a part of
25 a conspiracy with two separate money laundering objectives. It

1 charges him with first conspiring to engage in financial
2 transactions and property that represented the proceeds that
3 was from unlawful specified activity which affected interstate
4 commerce with the intent to conceal or disguise the nature,
5 location, source or ownership and control of the specified
6 unlawful activity in violation of the criminal code.

7 That count also charged that Mark Ciavarella was
8 conspiring to engage and attempt to engage in monetary
9 transactions in criminally derived property that was of a value
10 greater \$10,000 and which was derived from specified unlawful
11 activity. For you to find the defendant guilty of the crime of
12 money laundering conspiracy, you must be convinced that the
13 government has proven each of the following two elements: That
14 the conspiracy, agreement or understanding to commit money
15 laundering he violated -- existed in violation of the code
16 prohibiting such conduct.

17 Second, that at some time during the existence or
18 life of the conspiracy, agreement or understanding the
19 defendant knew the purpose of the agreement and then
20 deliberately joined that conspiracy. Later on I will be
21 conducting or instructing you on the elements of conspiracy.
22 Rather than keep repeating them where conspiracy is involved we
23 will delay and for you to pick up those principles at that
24 time.

25 In my instruction counts 22 to 26, I have reviewed

1 the elements of the crime, which is the offense charged as the
2 first objective of the money laundering conspiracy alleged in
3 count 21. To aid you in your consideration of count 21, I will
4 now instruct you on the elements of that count of conspiracy.

5 A defendant can be found guilty of a violation of
6 Title 18 USC -- these charges were in 22 to 26 -- only if all
7 the following elements are proved beyond a reasonable doubt.
8 First, that the defendant knowingly engaged in or attempted to
9 engage in monetary transactions, that he knew the transaction
10 involved property or funds that were the proceeds of some
11 criminal activity and that the property has a value of more
12 than \$10,000, that the property was, in fact, proceeds of wire
13 fraud and extortion as alleged in the indictment and that the
14 transaction took place in the United States.

15 The term monetary transaction means the deposit,
16 withdrawal, transfer or exchange of funds or monetary
17 instrument by, through or to a financial institution in a way
18 that affects interstate commerce. The term financial
19 institution includes an insured bank, FDIC, commercial bank or
20 trust company, a private bank or any credit union or thrift
21 institution and issuer, redeemer, cashier of travelers, checks
22 money orders or similar instruments. You notice in a lot of
23 these counts there's a reference to interstate commerce.
24 That's what makes it a federal law.

25 The same charges could exist in a criminal statute on

1 the state, but then this Court wouldn't have jurisdiction.
2 These are laws passed by Congress of the United States, and
3 Congress of the United States has jurisdiction to make those
4 things a crime if they involve interstate commerce.

5 As I mentioned to you a moment ago, the offense of
6 money laundering conspiracy, which is charged in count 21
7 alleges Mark Ciavarella conspired to commit two distinct money
8 laundering offense. It is not necessary, however, the
9 government prove he conspired to achieve both objectives of the
10 conspiracy. The government satisfies its burden beyond a
11 reasonable doubt if Mark Ciavarella conspired to commit either
12 of the alleged objectives of the conspiracy.

13 However, you must be unanimous in agreeing to which
14 objective or objectives you find to be proven beyond a
15 reasonable doubt. Next we have counts 27 to 34. And thereto,
16 these instructions would apply to each of those counts, and
17 they will -- as you will see if you examine each separate count
18 27 to 34, each separate count will show what the difference was
19 from the one before.

20 In order to sustain a burden of proof for the crime
21 interfering with interstate commerce by extortion under color
22 of official right as charged in these counts, 27 to 34, the
23 government must prove the following three elements beyond a
24 reasonable doubt: First, that the defendant, Mark Ciavarella,
25 took from Robert Powell or Vision Holdings property described

1 in counts 27 through 34. Second, Mark Ciavarella did so
2 knowingly and wilfully by extortion under color of official
3 right. Third, that as a result of Mark Ciavarella's actions,
4 interstate commerce or an item moving in interstate commerce
5 was obstructed, delayed or affected.

6 The term property includes money and any other
7 tangible or intangible thing of value. The government alleges
8 that Mark Ciavarella committed extortion under color of
9 official right. A public official such as a judge commits
10 extortion under color of official right if he uses that power
11 and authority of his office in order to obtain money, property
12 or something of value from another to which neither that public
13 official nor the government office has any official right.

14 Extortion under color of official right means that a
15 public official induced, obtained, accepted or agreed to accept
16 a payment to which he or she was not entitled knowing that the
17 payment was made in return for taking, withholding or
18 influencing an official act. The government may show that the
19 benefit was meant to be given to the public official directly
20 or through a third party who is not a public official but who
21 was acting in concert with the public official.

22 The government is not required to prove an explicit
23 promise to perform the official acts in return for the payment.
24 Passive acceptance of a benefit by a public official is a
25 sufficient basis for this type of extortion if the official

1 knows that he's being offered payment in exchange for his
2 ability to do official acts.

3 The government is not required to prove Mark
4 Ciavarella made any specific threats or used force or fear to
5 cause Robert Powell or Vision Holdings to part of the property
6 that the indictment alleges Mr. Ciavarella obtained by
7 extortion under color of right.

8 However, the government must prove beyond a
9 reasonable doubt that Mr. Ciavarella knowingly and deliberately
10 used his official position in order to obtain something of
11 value to which Mark Ciavarella had no right.

12 You will notice every time we are talking about any
13 crime and the elements of every crime, knowing and wilfully,
14 those words are interchanged. That's what makes something
15 criminal as opposed to an innocent mistake or even a negligent
16 act which is not a crime. The government is not required to
17 prove that Mark Ciavarella actually possessed the official
18 power to guarantee, deny or influence any action.

19 It's enough to show that Robert Powell or Vision
20 Holdings reasonably believed that Mark Ciavarella had actual
21 residual or anticipated official power to help with respect to
22 matters pending before a government agency. In order for Mr.
23 Ciavarella to obtain property of another, there must have been
24 a transfer, possession or a legal interest in that property
25 from the other person to Mr. Ciavarella or a designee of Mr.

1 Ciavarella.

2 The government must prove beyond a reasonable doubt
3 Mark Ciavarella's conduct affected or could have affected
4 interstate commerce. Conduct affects interstate commerce if it
5 in any way interferes with, changes or alters the movement or
6 transportation or a flow of goods, merchandise, money or other
7 property in commerce between or among the states. The effect
8 can be minimal.

9 All that is necessary to prove this element is that
10 the natural consequences of the offense potentially caused an
11 effect on interstate commerce to any degree however minimal or
12 slight. Count 35. I believe we only have several more to go
13 but quite a bit more to read. Count 35 of the indictment
14 charges that from on or about January 1st, 2002, to on or about
15 May 21, 2007 in the Middle District of Pennsylvania and
16 elsewhere that Mark Ciavarella agreed or conspired with Michael
17 Conahan and other persons known or unknown to the grand jury to
18 defraud the United States and that to further the objective of
19 the conspiracy one member of that conspiracy committed at least
20 one overt act as alleged in the indictment.

21 This is a general count of conspiracy against the
22 United States. In the indictment, it will state that there was
23 intentional conspiracy between these individuals, and I'm going
24 to give you their elements. But in a general conspiracy such
25 as this, this count -- general conspiracy, count 35, one of the

1 elements different from any other conspiracy that I have
2 alluded to is that there must have been an overt act. If you
3 look in the indictment for count 35 in addition to the charges,
4 they will then list a series of overt acts. It's important for
5 you to remember that for what I am going to tell you next.

6 It's a federal crime for two or more persons to
7 conspire or agree to defraud the United States or any of its
8 agencies even if they never actually achieve their objective.
9 A conspiracy is a kind of a criminal partnership. In order for
10 you to find Mark Ciavarella guilty of conspiracy to defraud the
11 United States, you must find the government proved the
12 following four elements, first, that two or more persons agreed
13 to defraud the United States as charged in the indictment.

14 To defraud United States means cheat the government
15 or any of its agencies out of money or property. It also means
16 to obstruct or interfere with one of the United States
17 Government lawful functions by deceit, craft, trickery or
18 dishonest means. Second, that Mark Ciavarella was a party to
19 or a member of the conspiracy. Third, that Mark Ciavarella
20 joined the agreement or conspiracy knowing of its objective to
21 defraud the United States and intending to join together with
22 at least one other conspirator to achieve that objective, that
23 is that Mark Ciavarella and at least one other conspirator
24 shared a unity of purpose with the intent to achieve a common
25 goal to defraud the United States.

1 Fourth, that at some time during the existence of the
2 agreement or conspiracy at least one of its members performed
3 an overt act in order to further the objective of the
4 conspiracy. That latter element is important. One of those
5 overt acts that are charged has to -- at least one of them has
6 to be proved. The existence of an agreement. I'm going to
7 have to read this to you. What I want to tell you as I often
8 do in a criminal case in trying to describe a conspiracy it's
9 nothing but an agreement. It can be formal or informal. It
10 doesn't have to include words.

11 By way of illustration I will say you can have ten
12 people standing on a corner and there is going to be a
13 discussion in that group to do something unlawful because a
14 conspiracy is an agreement to do something unlawful. You can
15 be standing there. But because you're standing there doesn't
16 make you a conspirator. You're not a conspirator unless while
17 you're standing there you participate and agree with the others
18 to join with them one way or another to accomplish the end that
19 they are talking about, and that's what's important. The
20 government has to prove the defendant's connection to a
21 conspiracy.

22 That was a simplified explanation. If the first
23 element of the crime of conspiracy exists, the government must
24 prove beyond a reasonable doubt that two or more persons
25 knowingly and intentionally arrived at a mutual understanding

1 or agreement, either spoken or unspoken, to work together to
2 achieve the overall objectives of the conspiracy to defraud.
3 The government does not have to prove the existence of a formal
4 or written agreement or an express oral agreement spelling out
5 the details of the understanding. The government also does not
6 have to prove that all the members of the conspiracy directly
7 met or discussed between themselves their unlawful objective or
8 agreed to all the details or agreed to what the means were by
9 which the objective would be accomplished.

10 The government isn't even required to prove that all
11 the people named in the indictment were, in fact, parties to
12 the agreement or that all members of the conspiracy were named
13 or that all members of the conspiracy are even known. What the
14 government must prove beyond a reasonable doubt is that two or
15 more persons in some way or manner arrived at some form of
16 agreement, mutual understanding or meeting of the minds to try
17 to accomplish a common and unlawful objective.

18 To that end, you may consider both direct evidence
19 and circumstantial evidence in deciding whether the government
20 has proved beyond a reasonable doubt that an agreement or
21 mutual understanding existed. If you find under the charge of
22 general conspiracy to defraud a criminal agreement or
23 conspiracy existed, then in order to find Mark Ciavarella
24 guilty of conspiracy, you must also find that the government
25 proved beyond a reasonable doubt that he knowingly and

1 intentionally joined that agreement or conspiracy during its
2 existence.

3 The government must prove that Mark Ciavarella knew
4 the goal or objective of the agreement of conspiracy and
5 voluntarily joined it during the existence intending to achieve
6 a common goal or objective and to work together with the other
7 alleged conspirators toward the goal's objective. You may
8 consider both direct evidence and circumstantial evidence to
9 decide whether Mark Ciavarella joined a conspiracy, knew of its
10 criminal objective and intended to further the objective.

11 Evidence would show that Mark Ciavarella only knew
12 about the conspiracy or only kept bad company by associating
13 with the members of the conspiracy or was only present when it
14 was discussed or when a crime was committed is not sufficient
15 to prove Mr. Ciavarella was a member of the conspiracy even if
16 he approved of what was happening or did not object to it.

17 Likewise, evidence showing that Mark Ciavarella may
18 have done something that happened to help a conspiracy doesn't
19 necessarily prove that he joined the conspiracy. You may,
20 however, consider this evidence with all the other evidence in
21 deciding whether the government proved beyond a reasonable
22 doubt that he joined the conspiracy.

23 Now, in order to find Mark Ciavarella guilty of
24 conspiracy, you must find that the government proved beyond a
25 reasonable doubt that he joined the conspiracy knowing of its

1 objective and intending to help further or achieve that
2 objective. In other words, the government must prove that he
3 knew the objective or goal of the conspiracy, that he joined
4 the conspiracy and that -- at least one -- that he and at least
5 one other person alleged conspirators shared a unity of purpose
6 of the objective or goal. With regard to the fourth element of
7 conspiracy overt acts -- being a bit repetitious -- the
8 government must prove beyond a reasonable doubt that during the
9 existence of the conspiracy at least one member of the
10 conspiracy performed at least one of the overt acts described
11 in the indictment.

12 I told you you can go to that count at the end. It
13 says overt acts, and you can see them all listed there. The
14 indictment alleges certain overt acts. The government doesn't
15 have to prove all of these acts were committed or that any of
16 these acts were themselves illegal. The government does not
17 have to prove Mark Ciavarella personally committed any of the
18 acts, but the government must prove beyond a reasonable doubt
19 that at least one member of the conspiracy committed at least
20 one of the overt acts alleged in the indictment and committed
21 it during the time that the conspiracy existed for the purpose
22 of furthering or helping to achieve the objective of the
23 conspiracy. You must unanimously agree on the overt act that
24 you agree to. You will have a choice, 15, whatever is alleged
25 in the indictment.

1 Now, the government is not required to prove that any
2 of the members of the conspiracy were successful in achieving
3 any or all of the objectives of the conspiracy. You may find
4 Mr. Ciavarella guilty of conspiracy if you find that the
5 government proved beyond a reasonable doubt the elements I've
6 explained to you even if you find that the government did not
7 prove any of the conspirators actually defrauded the United
8 States.

9 Conspiracy is a criminal offense separate from the
10 offense that was the objective of the conspiracy. Conspiracy
11 is complete without the of commission that offense. A
12 conspiracy ends -- remember everything has to be done during
13 the period of a conspiracy. But a conspiracy ends when the
14 objectives of the conspiracy have been achieved and when all
15 members of the conspiracy have withdrawn. However, a
16 conspiracy may be continuing. And if it is, it lasts until
17 there's some affirmative showing that it has ended or all
18 members have withdrawn.

19 Next in conspiracy -- and this has been argued to you
20 and I think explained, but it needs to be repeated. Evidence
21 in this case -- there was some objections made, and the
22 government responded that part of the conspiracy, oh, yes, it's
23 conspiracy, it's allowed, it came from a coconspirator.
24 Evidence has been admitted in this case that certain persons
25 who are alleged to be coconspirators, Mr. Ciavarella, did or

1 said some different things. Acts or statements of any member
2 of a conspiracy are treated as the acts or statements of all
3 the members of the conspiracy if these acts or statements are
4 performed or spoken during the existence of the conspiracy and
5 to further its objectives. Therefore, you may consider
6 evidence against this defendant any acts done or statements
7 made by any members of that conspiracy during the existence of
8 and to further the objectives of the conspiracy.

9 You may consider these acts and statements even if
10 they were done in Mark Ciavarella's absence and without his
11 knowledge. As with all of the evidence presented in this case,
12 it is for you to decide whether you believe this evidence and
13 how much weight is going to be given to that evidence. Now, we
14 are in a different area. Counts 36 to 37, which is even closer
15 to the end, count 36 and 37 of the indictment charge the
16 defendant, Mark Ciavarella, with filing a false tax return
17 which is in violation of federal law, and that's charged from
18 36 to 39 for the years 2003, 2004 and 2005, separate count for
19 each year.

20 In order to find the defendant guilty of this
21 offense, you must find that the government proved each of the
22 following five elements beyond a reasonable doubt: Mark
23 Ciavarella made and subscribed and filed an income tax
24 document, that the tax return document contained a written
25 declaration that it was and made under penalty of perjury, that

1 the return was false regarding a material matter and, fourth,
2 that Mark Ciavarella did not believe the return document was
3 true and correct as to that material matter, and, fifth, that
4 Mark Ciavarella acted wilfully.

5 The first element is the government has to prove
6 beyond a reasonable doubt that Mark Ciavarella made and
7 subscribed and filed a tax return. And a tax return is made
8 and subscribed at the time that it was signed and is filed at
9 the time that it's delivered to the Internal Revenue Service.
10 The second element the government has to prove beyond a
11 reasonable doubt that the return document contained a written
12 declaration that it was made under penalty of perjury.

13 To satisfy this element, the government must prove
14 that on its face the return document contained a statement
15 indicating that the return was made under penalty of perjury.
16 Third element, the government must prove beyond a reasonable
17 doubt that the return was false regarding a material matter,
18 and it may be false not only by reason of understatement of
19 income but also because of overstatement of lawful deductions
20 or because deductible expenses are mischaracterized on the
21 return.

22 The false statement in the return must be material.
23 This means that it must be essential to an accurate
24 determination of Mr. Ciavarella's tax liability. However, the
25 government does not need to prove of the existence of tax

1 deficiency or loss to the government. Fourth -- fourth element
2 the government must prove beyond a reasonable doubt that Mark
3 Ciavarella did not believe the return document was true and
4 correct as to material matters whether he did not believe --
5 whether he did not believe the return to be true and correct as
6 to material matters may be proven by Mr. Ciavarella's conduct
7 and by all the facts and circumstances surrounding the case.

8 The last count is the first count, which is --
9 identifies earlier conduct or participation in conduct or
10 affairs of an enterprise through a pattern of racketeering
11 activity. There are elements of that offense, and they are not
12 easy elements. We will take a break and conclude the charge at
13 that point.

14 (A brief recess was taken.)

15 THE COURT: The last count in the indictment has two
16 counts. Count one of the indictment at the beginning charges
17 the defendant with violating the Racketeer Influenced and
18 Corrupt Organizations Act also known as RICO. Under this
19 statute, it's a federal time for any person who is employed by
20 or associated with an enterprise that was engaged in or affects
21 interstate or foreign commerce, to conduct or participate in
22 the conduct of the affairs of that enterprise through a pattern
23 of racketeering activity.

24 In order to find this defendant guilty of this
25 offense, you must find that the government proved each of the

1 following five elements beyond a reasonable doubt: The
2 existence of an enterprise, that the enterprise was engaged in
3 or its activities affecting interstate or foreign commerce.
4 You know why that's in there. That Mark Ciavarella was
5 employed by or associated with that enterprise and that Mark
6 Ciavarella knowingly conducted that enterprise's affairs or
7 that he knowingly participated directly or indirectly in the
8 conduct of that enterprise's affairs. Fifth, that the
9 defendant knowingly conducted or participated directly or
10 indirectly in the conduct of that enterprise's affairs through
11 a pattern of racketeering activity as alleged in the
12 indictment.

13 I will now explain the law and these particular
14 elements. First element, the government has to prove beyond a
15 reasonable doubt that the offense charged in count one is the
16 existence of the enterprise as alleged in the indictment. An
17 enterprise may be a legal entity such as a corporation or
18 partnership, a group of individuals associated and, in fact,
19 although not a legal entity. In this case the enterprise
20 alleged in the indictment was the Court of Common Pleas for
21 Luzerne County, part of the judicial branch of government of
22 the Commonwealth of Pennsylvania. Under the law a court may
23 constitute an enterprise.

24 Although the government must prove that Mark
25 Ciavarella was employed by or associated with the enterprise,

1 the enterprise must itself be an entity separate and distinct
2 from the defendant. Second element, the government must prove
3 beyond a reasonable doubt for the offense charged in count one
4 that the enterprise was engaged in interstate commerce or
5 enterprise's activity affected interstate commerce. This means
6 the government must prove that the enterprise was involved in
7 or affected in some way trade or business or travel between two
8 or more states.

9 An enterprise is engaged in interstate commerce when
10 itself directly engages in production, distribution or
11 acquisition of services, moneys, goods or other property.
12 Affected by interstate commerce is if its activities in any way
13 interfered with, changed or altered the movement or
14 transportation of flow of goods. The government must prove
15 that the enterprise's activities had some effect on commerce no
16 matter how minimal or slight. The government need not prove
17 that Mark Ciavarella knew the enterprise was engaged in or that
18 the enterprise's activity would affect interstate commerce.
19 All the government need -- the government also need not prove
20 that Mark Ciavarella intended to obstruct, delay or interfere
21 with interstate commerce or that the purpose of the alleged
22 crime generally was to affect interstate commerce.

23 Moreover, you don't have to decide whether the effect
24 on commerce was harmful or beneficial. The government does not
25 have to prove that the pattern or the individual acts of

1 racketeering activity themselves affected interstate commerce.
2 Rather, it is the enterprise and its activities considered as a
3 whole that must show you have that effect. The third element
4 that the government must prove beyond a reasonable doubt of the
5 offense charged in count one is that Mark Ciavarella was either
6 employed by or associated with the enterprise. The government
7 need not prove both.

8 If you find that Mark Ciavarella was employed by the
9 enterprise, that is enough to satisfy the element. I have to
10 tell you that he was a dually elected official and a member of
11 the Court. The government is also not required to prove that
12 Mr. Ciavarella had a formal managerial position in the
13 enterprise or participated in all its activities.

14 What the government must prove beyond a reasonable
15 doubt is that sometime during the existence of the enterprise
16 as alleged in the indictment Mark Ciavarella was employed by
17 and associated with the enterprise within the meeting of those
18 terms. Fourth element, the government must prove beyond a
19 reasonable doubt that offense charged in count one that Mark
20 Ciavarella knowingly conducted the affairs of the enterprise or
21 that he knowingly participated directly or indirectly in the
22 conduct of the affairs of the enterprise.

23 In order to prove this element, the government must
24 prove the connection between Mark Ciavarella and the conduct of
25 the affairs of the enterprise or the Court. The government

1 must prove that Mark Ciavarella took some part in the operation
2 or management of the enterprise or the -- he had some role in
3 directing the enterprise's affairs.

4 You could find Mark Ciavarella participated directly
5 or indirectly in the affairs of the enterprise if you find that
6 he was a lower level participant who acted under the direction
7 of upper management knowingly furthering the aims of the
8 enterprise by implementing management decisions or carrying out
9 the instructions of those who control or that Mark Ciavarella
10 knowingly performed acts, functions or duties that were
11 necessary to or helpful to the operation of the enterprise.
12 The fifth element, the government must prove beyond a
13 reasonable doubt that the offense charged in count one is that
14 Mark Ciavarella knowingly conducted the enterprise's affairs or
15 knowingly participated directly or indirectly in the conduct of
16 the enterprise through a pattern of racketeering activity.

17 To establish this element, the government must prove
18 each of the following beyond a reasonable doubt: That Mark
19 Ciavarella committed at least two of the acts of racketeering
20 activity alleged in the indictment and the last act of
21 racketeering activity occurred within ten years after the
22 commission of the previous act of activity. Now, in the
23 indictment on Page 12, where it says pattern of racketeering
24 activity, racketeering activity one, there's a total of 13 of
25 them.

1 Racketeering activity one constituted wire fraud.
2 That's why we instructed you on the meaning of wire fraud
3 before we got to this particular count. Wire transfer totaling
4 \$997,600 made in connection with the construction of
5 Pennsylvania Child Care Juvenile Detention Facility. There's a
6 list of 13 of those separate racketeering activities. We tell
7 you if he committed at least two of the acts of racketeering
8 activity alleged in the indictment, second, that the acts of
9 racketeering activity were related to each other meaning that
10 there was a relationship between or among the acts of
11 racketeering activity referred to as the relatedness
12 requirement, third, acts of racketeering activity amounted to
13 or posed a threat of continued criminal activity referred to as
14 the continuity requirement, and, fourth, that Mark Ciavarella
15 conducted or participated directly or indirectly in the conduct
16 of the enterprise's affairs through the pattern of racketeering
17 activity.

18 Now, with respect to the second requirement, acts of
19 racketeering activity, that they are related, the acts had some
20 or similar purposes, results, participants, victims or methods
21 of commissions or otherwise interrelated by distinguishing
22 characteristics. The third requirement the government has to
23 prove that the racketeering acts themselves amounted to
24 continuing racketeering activity or that the acts otherwise
25 posed a threat of continuing racketeering activity.

1 If you look at all or any number of those, you have
2 to decide from that whether there is this continuing activity.
3 Continuing racketeering activity or a threat of continuing
4 activity may also be proved by evidence showing past
5 racketeering activity that by its nature projected into the
6 future with a threat of repetition, for example, when the acts
7 of racketeering activity are part of a long-term association
8 that exists for criminal purposes or when the acts of
9 racketeering activity are shown to be the regular way of
10 conducting the affairs of the enterprise.

11 In deciding whether the government proved the pattern
12 of racketeering activity, you may consider evidence regarding
13 the number of acts of racketeering. We told you there was 13.
14 You may find that separately performed, functionally different
15 or direct or unrelated racketeering activity form a pattern of
16 racketeering activity if you find that the government proved
17 beyond a reasonable doubt that they were all undertaken in
18 furtherance of one or more of the purposes of the enterprise.

19 Now, to prove the fourth requirement that Mr.
20 Ciavarella conducted or participated in the conduct of the
21 enterprise affairs through a pattern of racketeering activity ,
22 the government must prove that the acts of racketeering had a
23 relationship or meaningful connection to the enterprise. This
24 relationship or connection may be established by evidence of
25 Mark Ciavarella was enabled to commit the activity by virtue of

1 position with or involved in the affairs of the enterprise or
2 the Court or by evidence that Mark Ciavarella's position or
3 involvement in the enterprise facilitated his commission of the
4 racketeering activity or by evidence that the racketeering
5 activity benefitted the enterprise, was authorized by the
6 enterprise, promoted or furthered the purposes of the
7 enterprise or some other way related to the affairs of the
8 enterprise.

9 Now, racketeering activity as defined by the RICO
10 statutes includes any acts that involve or that may be charged
11 as any wide range of crimes under state or federal law. Count
12 one of the indictment alleges Mark Ciavarella committed 13 acts
13 of racketeering activity, some of which the indictment alleges
14 were committed through acts constituting a violation of
15 multiple crimes under federal or state law.

16 Again, I reiterate that's why we charge you with the
17 earlier counts which can be the basis of racketeering activity
18 in this count. Now, racketeering acts one, two and three of
19 count one of the indictment allege Mr. Ciavarella committed
20 honest services wire fraud. These have been previously defined
21 in violation of the federal crimes code.

22 And in order to find that he committed any of these
23 acts of racketeering activity, you must first find that the
24 government proved beyond a reasonable doubt each of the
25 elements of honest services fraud that I previously read to

1 you. Other racketeering acts alleged in the indictment state
2 that Mr. Ciavarella committed offenses of extortion under color
3 of official right in violation of federal law. And in order to
4 find he committed any of the acts of racketeering, you must
5 find that the government proved each of the elements of
6 extortion under the color of official right I previously read
7 to you. The same is true with racketeering acts alleged in the
8 indictment which constitute bribery under Pennsylvania statute
9 in violation of that statute. In order to find Mark Ciavarella
10 committed any of these acts, you must find that the government
11 proved beyond a reasonable doubt each of the following
12 elements: That he solicited, accepted or agreed to accept
13 money from Robert Powell as alleged in the indictment and that
14 the money was solicited or accepted or agreed on as
15 consideration for a violation by Mark Ciavarella of a known
16 legal duty as a judge in the court of common pleas. And under
17 Pennsylvania law, the judge of the court common pleas has a
18 duty to refrain from being paid or accepting payment as
19 compensation for his official actions of any fee, emolument or
20 perquisite other than his salary and expenses provided by law.

21 Racketeering act 13 in the indictment alleges Mark
22 Ciavarella committed the offense of money laundering, and we
23 defined those terms as well. The indictment alleges Mark
24 Ciavarella committed these 13 acts stated in count one as
25 racketeering activity. And as I have instructed, you must find

1 that the government proved beyond a reasonable doubt that he
2 committed at least two of these alleged acts of racketeering
3 activity within the prescribed time period. You must be
4 unanimous. You must unanimously -- unanimously find that the
5 government proved beyond a reasonable doubt that Mark
6 Ciavarella committed each of at least two of the same
7 particular acts of racketeering activity. It's not enough for
8 some members of the jury find that he committed two of the
9 particular racketeering acts alleged while other members of the
10 jury find that he committed different acts. In order to for
11 you to find him guilty, there must be at least two specific
12 racketeering acts that all of you find were committed by Mark
13 Ciavarella.

14 I have instructed you on the elements of the RICO
15 statute or RICO offense in count one. A verdict form has been
16 prepared for you to use to record your verdict. As I explained
17 to you, the indictment alleged that the pattern of racketeering
18 in this case included 13 acts of racketeering activity.

19 As I've explained, to find a pattern of racketeering
20 activity, you must unanimously agree that the government proved
21 beyond a reasonable doubt at least two of the same particular
22 acts of racketeering activity alleged. The form includes a
23 series of interrogatories for you to answer with respect to
24 count one indicate which acts of racketeering activity, if any,
25 that you unanimously find. Do not answer these interrogatories

1 until after you reached your verdict. If you decide the
2 government has not proved Mark Ciavarella guilty of
3 Racketeering Influenced and Corrupt Organization or RICO
4 offense charged in count one, then you do not need to answer
5 any of these interrogatories. However, if you find unanimously
6 that the government proved each of the elements of this offense
7 beyond a reasonable doubt after you reached and recorded that
8 verdict on the verdict form, you should answer the
9 interrogatories.

10 It's not going to be difficult. You will be able to
11 follow it. You will have a verdict form. You must decide
12 whether Mark Ciavarella -- Mark Ciavarella is guilty of this
13 offense first before answering the interrogatories. If you
14 find him not guilty of conducting or participating in the
15 conduct of the affairs of an enterprise through a pattern of
16 racketeering activity as charged in count one, please proceed
17 to the next count. Do not answer the jury interrogatories. If
18 you find Mr. Ciavarella guilty of conducting or participating
19 in the conduct of the affairs of an enterprise through a
20 pattern of racketeering activity as charged in count one,
21 please answer the jury interrogatories before proceeding to the
22 next count.

23 Count two charges Mark Ciavarella agreed or conspired
24 with one or more other persons to conduct or to participate in
25 the conduct of an enterprise's affairs through a pattern of

1 racketeering activity as I've explained that to you. It's a
2 federal crime for two or more persons to agree or conspire to
3 commit an offense against the United States. We discussed that
4 reference to some of the other counts.

5 In order to find Mark Ciavarella guilty of conspiracy
6 to conduct or participate in the conduct of an enterprise's
7 affairs through a pattern racketeering activity, you must find
8 that the government proved beyond a reasonable doubt a series
9 of three elements. First, two or more persons agreed to
10 conduct or participate directly or indirectly the conduct of an
11 enterprise through a pattern racketeering activity. Mr.
12 Ciavarella was a party, and Mr. Ciavarella joined the agreement
13 or conspiracy knowing of its objective to conduct or
14 participate directly or indirectly in the conduct of the
15 enterprise's affairs through a pattern of racketeering activity
16 and intended to join together with at least one other person to
17 do so.

18 Again, the meaning of elements of enterprise,
19 employed by, or associated with, conduct or participate,
20 directly or indirectly, in the conduct of that enterprise's
21 affairs and through a pattern of racketeering activity are the
22 same as I've explained to you when I laid out the elements for
23 the RICO offense. However, the RICO conspiracy that I am
24 addressing now in count two is a distinct offense from the RICO
25 offense charged in count one.

1 There are several important differences between
2 these. One important difference is that unlike the
3 requirements to find Mr. Ciavarella guilty of the RICO offense,
4 in order to find Ciavarella guilty of the conspiracy charge in
5 count two, the government is not required to prove that the
6 alleged enterprise actually existed or that the enterprise
7 actually engaged in or its activities actually affected
8 interstate or foreign commerce. Rather, because an agreement
9 to commit a RICO offense is the essence of a RICO conspiracy,
10 the government need only prove that Mark Ciavarella joined the
11 conspiracy and that if the object of the conspiracy was
12 achieved, the enterprise would be established and the
13 enterprise would be engaged in or its activities would affect
14 interstate commerce.

15 You may find Mr. Ciavarella guilty of the RICO
16 conspiracy offense if the evidence establishes that Ciavarella
17 knowingly agreed to facilitate or further a scheme which it
18 completed constituted a RICO violation involving at least one
19 other conspirator who would be employed by or associated with
20 the enterprise and would participate in the operation or the
21 management of the enterprise.

22 Finally, in order to find Mr. Ciavarella guilty of
23 the RICO conspiracy charge in count two, the government is not
24 required to prove that he personally committed or agreed to
25 personally commit any of the acts of the racketeering activity.

1 However, the elements must establish that Mark Ciavarella
2 knowingly agreed to facilitate or further a scheme, which if
3 completed would include a pattern of racketeering activity
4 committed by at least one other conspirator.

5 To find Mr. Ciavarella guilty of this conspiracy in
6 count two, you must find that the government proved beyond a
7 reasonable doubt that he joined in that agreement with other
8 persons or persons knowing that the objective or purpose was to
9 conduct or participate directly or indirectly in the conduct of
10 the affairs of the enterprise through a pattern of racketeering
11 activity and intending to join with the other person or persons
12 to achieve the end.

13 In order to convict of this conspiracy, your verdict
14 must be unanimous as to which type of racketeering activity
15 Ciavarella agreed would be committed, for example, at least two
16 acts of honest services fraud or extortion under color of
17 official right or bribery chargeable under state law or one of
18 each or any combination.

19 A person in -- I am going to address you on aiding
20 and abetting. Several counts speak of the defendant and
21 Conahan and each aiding and abetting each other. A person may
22 be guilty of an offense because he personally committed the
23 offense himself or because he aided and abetted another person
24 in committing the offense.

25 A person who has aided and abetted another person

1 committing an offense is often called an accomplice. A person
2 whom accomplice aids and abets is known as the principal. In
3 this case, the government alleges Mr. Ciavarella aided and
4 abetted Michael Conahan in committing a number of offenses
5 charged in the indictment.

6 In order to find him guilty of any offense because he
7 aided or abetted Michael Conahan in committing the offense, you
8 must find the government proved beyond a reasonable doubt that
9 Michael Conahan committed the offenses charged by committing
10 the elements of the offense charged as I have explained those.
11 Michael Conahan need not have been charged with or found guilty
12 of these offenses. However, as long as you find the government
13 proved beyond a reasonable doubt that he committed the offense,
14 Mark Ciavarella knew the offense charged was going to be
15 committed was being committed by Michael Conahan and, third,
16 that he knowingly did some act for the purpose of assisting,
17 soliciting, facilitating or encouraging Michael Conahan in
18 committing the specific offense charged, fourth, that Mark
19 Ciavarella acts did in some way, aid, assist, facilitate,
20 encourage Michael Conahan to commit the offense and that Mark
21 Ciavarella's acts need not themselves be against the law.

22 Evidence that Mr. Ciavarella was merely present or
23 was merely a knowing spectator during the commission the
24 defense is not enough for you to find Mr. Ciavarella guilty as
25 an aider and abetter. If the evidence shows that Mr.

1 Ciavarella knew that the offense was being committed or was
2 about to be committed but does not also prove beyond a
3 reasonable doubt that it was his intent and purpose to aid,
4 assist, encourage, facilitate or otherwise associate himself
5 with the offense, you may not find him guilty of the offense of
6 aiding and abetting. Now, ladies and gentlemen, I'm not going
7 to review the evidence. The jury in this case has been very,
8 very alert.

9 In addition to taking the indictment and a copy of
10 the legal charges that I've been reading to you, you will be
11 taking a verdict slip, which is very self-explanatory. You
12 will have to look at that slip, and you will have to answer the
13 questions guilty or not guilty. It's pretty well
14 self-explanatory. Whatever you decide in any of the offenses
15 in addition to some elements where you must be unanimous as to
16 racketeering activity, where two are required, you must be
17 unanimous as to which two. Your verdict in every case has to
18 be unanimous. All members of the jury have to agree. You will
19 go out.

20 You will take the material I am going to give you.
21 The exhibits in this case will be provided for the jury and be
22 brought to the jury room by the bailiff who will be attending
23 probably outside of the -- the opposite door. There will be
24 writing material. If you have any questions at any time after
25 you elect a person who presides over your deliberation, the

1 foreperson, lady or man, whoever it is, if you have questions,
2 write them down, knock on the door. The gentleman the bring
3 the question to the Court. I will confer with the lawyers. We
4 will decide how we will answer your questions. Are there any
5 additions or corrections?

6 MR. HOUSER: One minor one from the government. May
7 we approach?

8 (The following discussion took place at sidebar:)

9 MR. HOUSER: One minor, Judge. I didn't realize this
10 until I actually started drafting the indictment. On a wire
11 fraud, the definition of interstate commerce that applies to
12 almost every other statute in federal law is different because
13 under wire fraud the wire has to actually cross a state line
14 not just affect interstate commerce. I didn't realize until we
15 drafted this indictment. Your Honor left out a portion of the
16 -- that portion of the instruction. That's the only request I
17 was going to make is that you clarify that because that is --
18 that is something that from the defense standpoint, they -- I
19 am sure -- they want to have us prove that aspect of it as
20 well. And this is -- this is the request we would ask that you
21 read the -- this paragraph right here, and that's it because
22 that explains it has to cross a state line.

23 THE COURT: It seems to contradict everything else we
24 said except in the case of wire fraud.

25 MR. HOUSER: But in wire fraud it's an additional

1 part of that. It's not affecting interstate commerce. It has
2 to cross the state line, the wire itself. That's different
3 about the wire fraud statute.

4 THE COURT: You concur in that?

5 MR. FLORA: I concur in that, Your Honor. That was
6 my understanding, too. Bill, you have --

7 MR. RUZZO: I have something, Your Honor. The
8 government has charged bribery -- charged Mark with bribery
9 under state law, state law bribery. Their allegations are that
10 it's -- that Powell's victim -- Powell was a victim of
11 extortion. There's an extortion statute in Pennsylvania
12 distinct from the bribery statute. We think all of those
13 racketeering acts should be dismissed, taken off the verdict
14 slip since the -- they charged the wrong statute.

15 MR. HOUSER: That's inaccurate, Judge. The RICO
16 statute permits us to charge any of the acts as specified as
17 unlawful activity, and this is bribery under state law. And
18 it's titled that in the statute book.

19 THE COURT: In the indictment, too.

20 MR. HOUSER: It is, yes.

21 MR. RUZZO: It is in the indictment.

22 THE COURT: All right. I am not going to touch the
23 subject, but you're covered.

24 MR. FLORA: Judge, just finally on sending the
25 indictment out, we met with the government, and we agree with

1 the government that with regards to Page 36, on the top of Page
2 37 the highlighted section should be redacted. We agreed with
3 that and --

4 THE COURT: What are those?

5 MR. HOUSER: It's -- there's some matters we didn't
6 prove at trial, and so what -- we have it done already, Judge.
7 We have the redactions.

8 THE COURT: Okay.

9 MR. FLORA: Page 38 there's a highlighted section
10 they marked. We agree that should be redacted. Pages 71
11 through 74 to the end they agreed they should be excluded
12 completely. We agree with that. For purposes of the record,
13 we will Mark this as Defendant's Exhibit 99 so we are
14 completely covered.

15 THE COURT: That's it.

16 MR. FLORA: Looking at the indictment, what we
17 couldn't agree to, it's our position Pages 1 through 11 should
18 be taken out of the indictment because that really goes to
19 their surrounding theory surrounding the case and everything.
20 It doesn't give the jury guidance as to the specific payments
21 or anything. There was a lot of additional things in there
22 which is almost like argument more than anything else. We also
23 believe --

24 THE COURT: I don't disagree with that except the
25 continuity is there with the indictment purpose. That's the

1 only reason I am letting it go.

2 MR. FLORA: Right. Pages 31 through 39 completely we
3 believe should be taken out for the same reason. Finally, Your
4 Honor, Pages 42 through 44 of the indictment deals with count 7
5 through 10. And that deals with the filing of the financial
6 disclosure statements with the AOPC. I know at oral argument
7 you indicated that you would take that under advisement. I
8 believe you probably denied even though you may not have stated
9 it of record.

10 We believe, Your Honor, that -- it's clearly improper
11 for the reasons stated to even submit those counts to the jury.

12 THE COURT: They are denied if I haven't. We've
13 taken everything out that they wanted out? The only trouble
14 with that is I marked for the jury's convenience -- I don't
15 think they are going to do an awful lot today anyway. So we
16 will give them that.

17 (The discussion at sidebar concluded.)

18 THE COURT: In charging you on the wire fraud, it's a
19 legal technicality, but the government asks that I read -- the
20 defense agreed, too. To transmit by means of wire radio or
21 television communication in interstate commerce means to send
22 from one state to another by means of telephone or telegraph
23 lines or by means of radio or television. This phrase includes
24 a telephone conversation by a person in one state with a person
25 in another state or electronic signal sent from one state to

1 another such as by fax or financial wire.

2 Use of the internet to send message such as e-mail or
3 to communicate or a website may constitute the wire
4 transmission in interstate commerce. That it?

5 MR. HOUSER: Thank you, Your Honor, yes.

6 THE COURT: Now, I told you will have writing
7 materials. I must tell the alternate jurors -- everybody well
8 in the jury box? Everybody feeling fine? Okay. Under those
9 circumstances, only 12 people can deliberate. And jurors No.
10 13, 14, 15 and 16 will be excused. You can get your materials
11 before you leave, and it's your choice once you're excused --
12 you're free to go. Whether you wish to discuss your role with
13 anyone is your business. Whatever you decide to do -- I will
14 suggest you not -- but you don't have to accept my suggestion,
15 okay. All this material will be brought in.

16 If you decide once you organize and have your
17 materials -- if you have a day of it, let us know. In which
18 case, you will be excused. We will ask the jury to return
19 tomorrow morning at 8:30 when you have been returning, and you
20 will continue to deliberate. At this stage, I have to add that
21 you be admonished. If you separate for the night or at any
22 time during the course of your deliberations, you are not to
23 talk to anyone about this case or to talk even between
24 yourselves about this case.

25 And the only time you are to talk to each other about

1 this case is when you're all together. Once any of you have
2 been separated, it would be inappropriate for to you do so. So
3 please remember that admonition. And when you go home again,
4 all the more reason no one should communicate with you, nor you
5 with anyone else. And certainly in all events you shouldn't
6 consider anything but what we instructed that you can legally
7 consider, and that is, only the evidence that you heard
8 presented for you to consider in this trial. Let us know what
9 you decide to do. And again, I tell 13, 14, 15 and 16 if you
10 have any material in there, get it. I want to thank you for
11 your patience and your service. You've been true to your oath
12 to this point, okay.

13 (The tipstaff was sworn at this time.)

14 (The jury left to deliberate at this time and
15 returned February 17, 2011 and February 18, 2011 to continue
16 deliberations.)

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REPORTER'S CERTIFICATE

I, LAURA BOYANOWSKI, Official Court Reporter for the United States District Court for the Middle District of Pennsylvania, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct transcript of the within-mentioned proceedings had in the above-mentioned and numbered cause on the date or dates hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my supervision.

Laura Boyanowski, RMR
Official Court Reporter

REPORTED BY:

LAURA BOYANOWSKI, RMR
Official Court Reporter
United States District Court
Middle District of Pennsylvania
Scranton, PA 18503

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